CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 12

D. F. STAHMANN, ANNA M. STAHMANN AND JOYCE F. STAHMANN, DOING BUSINESS AS STAHMANN FARMS COMPANY, PETITIONERS,

vs.

S. P. VIDAL, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEW MEXICO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 16, 1938.

CERTIORARI GRANTED APRIL 25, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 12

D. F. STAHMANN, ANNA M. STAHMANN AND JOYCE F. STAHMANN, DOING BUSINESS AS STAHMANN FARMS COMPANY, PETITIONERS,

vs.

S. P. VIDAL, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEW MEXICO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 26, 1938.

—5809

[fol. a] [Captions omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Law

2847

STAHMANN FARMS, a Co-partnership Composed of D. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, Plaintiffs,

vs.

S. P. VIDAL, Collector of Internal Revenue for New Mexico, Defendant

COMPLAINT—Filed May 5, 1936

Plaintiff states:

1. That during the crop year of 1934-1935 plaintiff was engaged in Dona Ana county, New Mexico, in the growing of cotton, and was and had been for many years prior thereto cultivating in excess of 2,000 acres of land.

2. That during the said crop year plaintiff produced a quantity of cotton in excess of the amount which, under the provisions of the so-called Cotton Control Act, being Public No. 169 of the 73rd Congress, approved April 21, 1934, 48 Stat. At L. 598, Chapter 157, U. S. C. A., Title 7, Secs. 725, et seq., it was entitled to obtain exemption certificates to cover, and in order to sell said cotton or to market the same it was by the said defendant compelled [fol. 2] to obtain so-called bale tags or identifying tags for each bale of cotton in excess of the quantity allotted under the provisions of said Act to it, and to obtain such tags it was compelled to pay and did pay, but under protest, the sum of $13,064.52, which payment was made in four separate installments, the first of which was in the sum of $9,131.44 and was dated November 27, 1934, and represented by its bank check in that amount, payable to the order of said defendant, the second of which was in the sum of $1,550.23 and was dated November 28, 1934, and represented by its bank check in that amount, payable to the order

of said defendant, the third of which was in the sum of $512.32 and was dated December 13, 1934, and represented by its bank check in that amount, payable to the order of said defendant, and the fourth of which was in the sum of $1,870.53 and dated January 19, 1935, and represented by its bank check in that amount, payable to the order of said defendant, and each and all of which said checks were in due course presented to and paid by the said bank upon which they were drawn to the order of said defendant; that the said tax was exacted by the said defendant in pursuance of the provisions of said so-called Cotton Control Act, and the assessment and collection thereof by the said defendant was illegal and wrongful in that the Act under which plaintiff was compelled to pay was a void and unconstitutional act and, as plaintiff is informed and believes, has, since the assessment and collection thereof, been by the Supreme Court of the United States, in effect, determined to be unconstitutional and void, and the same operated to furnish the defendant no authority whatsoever to demand, exact, and receive from the plaintiff the said amount, or any other amount whatsoever; and, even if the said Act had been valid and constitutional, the said tax so exacted was illegal and void for the reason, first, that under the terms of said Act ten million bales of cotton were authorized to be produced in the United States free and clear of the tax imposed by the said Act, and during the said crop year of 1934-1935 there was produced in the United States, as plaintiff is informed and believes, less than ten million bales of cotton; and, second, the amount thereof was arbitrarily fixed and charged at 5.67 cents per pound of lint [fol. 3] cotton produced by the plaintiff in excess of the amount exempt to him under the provisions of said Act, whereas the amount which could under the provisions of said Act have been lawfully assessed was not to exceed fifty per cent of the central market value thereof, which central market value fluctuated from time to time during the season in question, and the rate charged and collected, as aforesaid, was in excess of fifty per cent of the market value received by plaintiff.

3. That thereafter and on March 6, 1935, the plaintiff duly filed with the said defendant collector claim for refund, according to the provisions of law in that regard and the regulations of the Secreary of the Treasury, which

said claim for refund was stated in detail, and the grounds upon which plaintiff claimed the right to such refund were specifically expressed, and the same was sworn to and filed with the said defendant collector, in duplicate, and which said claim was in due course forwarded by the said defendant collector to the Commissioner of Revenue, and was in like due course by the said Commissioner of Revenue denied and rejected, due notice whereof was furnished to this plaintiff.

Wherefore, plaintiff prays judgment for the recovery of and from the said defendant of the sum of $13,064.52, together with lawful interest thereon from the dates of payment thereof, as hereinbefore set out, and for all costs.

W. C. Whatley, Attorney for Plaintiff, Las Cruces, New Mexico.

Duly sworn to by D. F. Stahmann. Jurat omitted in printing.

[fol. 4] IN UNITED STATES DISTRICT COURT

STIPULATION EXTENDING TIME TO ANSWER—Filed June 17 1936

It is hereby Stipulated by the Plaintiff in the above entitled cause with the defendant that the time within which the defendant may have to answer the above complaint, be and it hereby is extended to June 29, 1936.

W. C. Whatley, Attorney for Plaintiff.

Approved this 17th day of June, A. D. 1936.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

STIPULATION EXTENDING TIME TO ANSWER—Filed July 22, 1936

It Is Hereby Agreed by plaintiff and defendant that defendant may have until August 10, 1936, to answer in the above case.

Dated July 19, 1936.

W. C. Whatley, Attorney for Plaintiff.

This Stipulation is hereby Approved.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

DEFENDANT'S ANSWER—Filed August 10, 1936

Comes now S. P. Vidal, Collector of Internal Revenue for the District of New Mexico and defendant in the above cause, and for answer to the Complaint says:

I

Defendant denies all those allegations contained in Paragraph One of the Plaintiff's Complaint and demands strict proof thereof.

II

Answering those allegations contained in Paragraph No. 2 of the Plaintiff's Complaint, defendant denies the same.

III

Answering those allegations contained in Paragraph No. 3, thereof, defendant denies the same.

[fol. 5] Wherefore, having fully answered, defendant moves the Court that the Plaintiff's Complaint be dismissed and that he take nothing thereby and that defendant be allowed its costs herein lawfully expended.

Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorney for Defendant.

Duly sworn to by S. P. Vidal. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

STIPULATION WAIVING JURY TRIAL—Filed October 15, 1936

Comes now the attorneys for the respective parties to the above entitled and numbered cause and stipulate and agree that the said case may be tried to the Court without the intervention of a jury.

Dated this 30th day of September, 1936.

W. C. Whatley, Attorney for Plaintiff; Gilberto Espinosa, Assistant U. S. Attorney, Attorney for Defendant.

IN UNITED STATES DISTRICT COURT

DEFENDANT'S AMENDED ANSWER—Filed October 23, 1936

In answer to the plaintiff's complaint in the above entitled cause the defendant says:

I

The defendant admits the allegations of fact contained Paragraph One of the plaintiff's complaint.

[fol. 6]

II

In answer to the allegations contained in Paragraph Two of the Plaintiff's complaint the defendant admits that during the crop year 1934-1935 the plaintiff produced a quantity of cotton in excess of the amount which, under the provisions of the Act of April 21, 1934, c. 157, 48 Stat. 598, it was entitled to obtain exemption certificates to cover; and the defendant further admits that the sum of $13,064.52 was paid to him as Collector of Internal Revenue on the dates and in the amounts alleged in Paragraph Two of the plaintiff's complaint. The defendant denies that such amounts were paid to him by the plaintiff, under protest or otherwise, and the defendant alleges that if such amounts were paid to him by the plaintiff, they were paid to discharge the liability imposed upon a person or persons other than the plaintiff by the Act of April 21, 1934. Defendant further denies that the plaintiff was compelled to pay such amounts to him, and the defendant denies that he illegally assessed or collected any sum from the plaintiff or from any person or persons whose liability under the Act of April 21, 1934, was discharged by the plaintiff. The defendant further denies each and every other allegation contained in Paragraph Two of the plaintiff's complaint not herein specifically admitted or denied.

III

In answer to the allegations contained in Paragraph Three of the plaintiff's complaint the defendant admits that on March 6, 1935, the plaintiff filed with the defendant a claim, on Form 843 provided by the Treasury Department, for refund of the sum of $13,064.52, which claim was forwarded by the defendant in due course to the Commissioner of Internal Revenue, and was rejected by the Commissioner

of Internal Revenue on August 22, 1935. The defendant denies the remaining allegations contained in Paragraph Three of the plaintiff's complaint.

Wherefore, having fully answered, the defendant moves that the plaintiff's complaint be dismissed and that he take nothing thereby; and that the defendant be allowed his costs herein lawfully expended.

Wm. J. Barker, (E) United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for the Defendant.

[fol. 7] *Duly sworn to by S. P. Vidal. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO FACTS, ETC.—Filed November 23, 1936

It is hereby stipulated and agreed by and between the plaintiff in the above entitled cause by its attorney, W. C. Whatley, and the defendant, S. P. Vidal, Collector of Internal Revenue for New Mexico, by Wm. J. Barker, United States Attorney, and Gilberto Espinosa, Assistant United States Attorney for the District of New Mexico, as follows:

It is agreed that the facts upon which the court may pass upon the issues involved in this cause be agreed upon as follows:

All of those allegations of fact made in the plaintiff's complaint and admitted by the defendant's amended answer are herein incorporated by reference as a part of this stipulation.

It is also stipulated and agreed that the following facts pertinent to the issues herein may be taken as true before the court.

I

During the crop year 1934 and 1935 the plaintiff produced a quantity of cotton in excess of its allotted amount under the Cotton Control Act, as set forth in the plaintiff's complaint.

II

The plaintiff delivered this cotton to the Santo Tomas Gin Company of Mesquite, New Mexico for the purpose of separating the seed from the cotton and placing the same in marketable condition.

[fol. 8] III

The Santo Tomas Gin Company ginned the plaintiff's cotton and filed monthly returns with the Collector of Internal Revenue for New Mexico for the months of October, November and December as ginner of said cotton. The returns filed showed a total tax due in the amount of $13,064.52.

IV

Upon the returns hereinbefore listed assessments were made against the Santo Tomas Gin Company as follows: "Cotton ginning:

Oct.-Nov. 1934	P.T. 1934	Dec.	P. 8000 L. 7	$11,193.99
			12/19/34	$11,193.99 PD.
Dec. 1934	P.T. 1935	Jan.	P. 8001 L. 0	$ 1,870.53
			1/25/35	$ 1,870.53 PD.

The above tax was paid by checks drawn by Stahmann Farms payable to the Collector of Internal Revenue as follows:

Check No. 1571, for $9,131.44, dated November 27, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1584 for $1,550.23, dated November 28, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1728, for $512.32, dated December 13, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934, and

Check No. 135, dated January 19, 1935, for $1,870.53, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, January 26, 1935.

V

The Santo Tomas Gin Company declined to deliver the ginned cotton to the plaintiff until the assessments made [fol. 9] were paid and the plaintiff paid the said tax by check drawn by the Stahmann Farms, payable to the Collector of Internal Revenue in the amounts hereinbefore listed.

VI

The Collector of Internal Revenue applied the payments made against the assessments outstanding on his books under the name of the Santo Tomas Gin Company, Mesquite, New Mexico.

VII

On March 6, 1935 the plaintiff filed a claim for refund of $13,064.52 with the Collector of Internal Revenue for the District of New Mexico, this claim being based upon the alleged unconstitutionality of the Bankhead Cotton Act.

VIII

On August 22, 1935, the Commissioner of Internal Revenue denied and rejected this claim.

IX

It is also stipulated and agreed that under the terms of the act sub-sec. (c), Sec. 703 Title 7 U. S. C. A. in question there was fixed as the maximum amount of the cotton crop harvested in the crop year 1934-1935 that might be marketed exempt from the payment of the tax by said act levied ten million five hundred pound bales, and that there was produced in the United States during the crop year 1934-1935 according to New York Cotton Exchange Basic Data nine million six hundred thirty-seven thousand five hundred pound bales, which figure is stipulated subject to change if found to be incorrect.

It is further stipulated that upon the above facts the following issues of law are raised:

1. Whether or not the Bankhead Cotton Act is or is not constitutional.

2. Whether the tax liability in question was that of the Santo Tomas Gin Company or of the plaintiff.

3. Whether, in view of the fact that less than ten million five hundred pound bales of cotton were produced in 1934-1935, that being the amount fixed by the terms of the act as [fol. 10] the maximum amount which might be produced for that year tax free, the Secretary of Agriculture had authority, without regard to the constitutionality of the act, to limit production and to impose the tax in question.

It is further stipulated that upon this Stipulation of Facts this matter be submitted to the Court upon briefs to be filed by the plaintiff and defendant.

W. C. Whatley, Attorney for Plaintiff. Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

The foregoing Stipulation is hereby approved this 23rd day of November, 1936.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

STIPULATION TO STRIKE PART OF STIPULATION OF NOVEMBER 23RD, 1936—Filed December 18, 1936

Whereas, in the above entitled and numbered cause, the plaintiff and defendant have heretofore entered into a stipulation whereby the facts in the above case might be submitted to the Court by stipulation, and whereas the said stipulation has been filed and approved by the Court;

Whereas, in said stipulation in Paragraph 9 (unnumbered Paragraph 2) it is stipulated that three issues of law are raised;

It Is Stipulated and Agreed by and between plaintiff and defendant that that part of said stipulation which stipulates the issues of law raised in this manner be stricken from the said stipulation and the matter submitted to the Court upon such issues of law as are raised by the pleadings and the facts.

W. C. Whatley, Attorney for Plaintiff. Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

[fol. 11] The foregoing Stipulation is hereby approved this 16th day of December, 1936.

Sam G. Bratton, Circuit Judge, Assigned to the District.

IN UNITED STATES DISTRICT COURT

DEFENDANT'S REQUEST FOR SPECIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW AND MOTION FOR JUDGMENT—Filed December 30, 1936

Comes now the defendant by Wm. J. Barker, United States Attorney and Gilberto Espinosa, Assistant United States Attorney, at the close of all the evidence and before the submission of this case to the Court and before the decision of the Court and before the announcement by the Court of any decision and before the making of any findings of fact and conclusions of law and before the rendering or entering of any judgment herein, final or otherwise, and all of the evidence for the plaintiff and defendant having been introduced and filed in the form of a written agreed stipulation and statement of facts respectfully requests and moves the Court as follows:

1. Defendant requests the Court to find specially that the facts are as agreed upon by the parties in said stipulation of facts.

2. Defendant requests the Court to render conclusions of law that under the pleadings and agreed facts plaintiff is not entitled to recover from the defendant as prayed for in the complaint and that the facts are insufficient in law to justify or support any judgment in favor of the plaintiff.

3. Defendant moves the Court to order judgment in its favor upon the ground that the pleadings and the stipulated facts in this case with every inference that may properly be drawn therefrom are insufficient at law to warrant or support a judgment against the defendant and upon the ground that on the pleadings and the stipulated facts the defendant is entitled to judgment dismissing the plaintiff's complaint at the plaintiff's cost.

4. Defendant submits with and as a part of this motion proposed special findings of facts, conclusions of law, and order and judgment in the cause and requests the court to [fol. 12] approve and allow same substantially as submitted below:

SPECIAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND JUDGMENT REQUESTED BY DEFENDANT

This cause came on regularly to be heard this — day of January, A. D. 1937, before the Honorable Colin Neblett,

United States District Judge sitting at Santa Fe, New Mexico. The parties were represented by their respective counsel of record and the cause was submitted to the Court upon the pleadings and a written agreed stipulation of facts which the parties had filed in the cause. At the close of the evidence, the defendant requested the Court to find specially that the facts are as set forth in the agreed stipulation of facts. The defendant then moved the Court to render conclusions that under the pleadings and the evidence the law is with the defendant and to award judgment to the defendant with costs against the plaintiff.

After consideration thereof and argument of counsel, the Court finds the facts, renders the conclusions, and orders and adjudges as follows:

REQUESTED SPECIAL FINDINGS OF FACT

The Court finds that the facts material to a determination of the issues in this cause are as agreed upon by the parties in the written stipulation of facts upon which the cause was submitted to the Court, and reference is made to said agreed stipulation of facts and said stipulation is hereby set out and made part of these special findings as follows:

(Stipulation)

All of those allegations of fact made in the plaintiff's complaint and admitted by the defendant's amended answer are herein incorporated by reference as a part of this stipulation.

I

During the crop year 1934 and 1935 the plaintiff produced a quantity of cotton in excess of its allotted amount under the Cotton Control Act, as set forth in the plaintiff's complaint.

[fol. 13]

II

The plaintiff delivered this cotton to the Santo Tomas Gin Company of Mesquite, New Mexico, for the purpose of separating the seed from the cotton and placing the same in marketable condition.

III

The Santa Tomas Gin Company ginned the plaintiff's cotton and filed monthly returns with the Collector of Internal

Revenue for New Mexico for the months of October, November and December as ginner of said cotton. The returns filed showed a total tax due in the amount of $13,064.32.

IV

Upon the returns hereinbefore listed assessments were made against the Santo Tomas Gin Company as follows: "Cotton ginning:

Oct-Nov. 1934	P.T. 1934 Dec.	P. 8000 L. 7	$11,193.99
		12/19/34	$11,193.99 PD.
Dec. 1934	P.T. 1935 Jan.	P. 8001 L.O.	$ 1,870.53
		1/25/35	$ 1,870.53 PD.

The above tax was paid by checks drawn by Stahmann Farms payable to the Collector of Internal Revenue as follows:

Check No. 1571, for $9,131.44, dated November 27, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1584 for $1,550.23, dated November 28, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1728, for $512.32, dated December 13, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934, and

Check No. 135, dated January 19, 1935, for $1,870.53, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, January 26, 1935.

[fol. 14]

V

The Santo Thomas Gin Company declined to deliver the ginned cotton to the plaintiff until the assessments made were paid and the plaintiff paid the said tax by check drawn by the Stahmann Farms, payable to the Collector of Internal Revenue in the amounts hereinbefore listed.

VI

The Collector of Internal Revenue applied the payments made against the assessments outstanding on his books

under the name of the Santa Tomas Gin Company, Mesquite, New Mexico.

VII

On March 6, 1935 the plaintiff filed a claim for refund of $13,064.52 with the Collector of Internal Revenue for the District of New Mexico, this claim being based upon the alleged unconstitutionality of the Bankhead Cotton Act.

VIII

On August 22, 1935, the Commissioner of Internal Revenue denied and rejected this claim.

IX

It is also stipulated and agreed that under the terms of the Act Sub-sec. (c) 703, Title 7, U.S.C.A., in question there was fixed as the maximum amount of the cotton crop harvested in the crop year 1934-1935 that might be marketed exempt from the payment of the tax by said act levied ten million five hundred pound bales, and that there was produced in the United States during the crop year 1934-1935, according to New York Cotton Exchange Basic Data, nine million six hundred thirty-seven thousand five hundred pound bales, which figure is stipulated subject to change if found to be incorrect.

Requested Conclusions of Law

The Court concluded that under the pleadings and the facts as above found, the law is as follows:

1. That the plaintiff is not entitled to recover the whole or any part of the taxes sought to be recovered in this suit [fol. 15] for the reason that the plaintiff is and was not the taxpayer and the taxes which plaintiff seeks to recover herein were assessed against a person other than this plaintiff and the amount paid by this plaintiff's check was paid voluntarily to the defendant by the plaintiff for and on account of a tax liability of a person other than this plaintiff.

2. That the law under which the tax was collected was valid and constitutional.

3. That the taxes sought to be recovered were lawfully assessed and collected.

4. That the defendant is entitled to judgment in its favor against the plaintiff and order and judgment may be entered accordingly.

ORDER AND JUDGMENT

1. The motion of defendant for judgment in his favor is hereby granted with costs against the plaintiff.

2. It is ordered and adjudged by the Court that the plaintiff is not entitled to recover from the defendant in any sum, and that the defendant is entitled to judgment of dismissal, together with its lawful costs and expenses in the cause and this cause is hereby dismissed and judgment rendered in favor of the defendant at plaintiff's costs.

——— ———, United States District Judge.

In the event that the Court overrules the defendant's foregoing motion for judgment defendant respectfully excepts and prays that it be allowed an exception to such action and ruling of the Court and the defendant further excepts and prays that it be allowed an exception or exceptions to the action and ruling of the Court in making and entering any findings of fact or conclusions *or* law contrary to those requested by the defendant.

Respectfully submitted, Wm. J. Barker, United States Attorney. Gilberto Espinosa, Assistant U. S. Attorney.

[fol. 16] The foregoing requested findings and conclusions of law requested by defendant are refused and denied.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed January 30, 1937

This cause having been heretofore submitted to the court upon the pleadings and upon a stipulation of facts, and the plaintiff and the defendant having submitted their briefs in writing, and the court having read the pleadings and the briefs of the respective parties and having considered the same, Finds the following facts:

I

That during the crop year of 1934-1935, plaintiff was engaged in Dona Ana County, New Mexico, in the growing of cotton, and was and had been for many years prior thereto, cultivating in excess of two thousand (2000) acres of land; and that during said crop year, plaintiff produced a quantity of cotton in excess of that which, under the provisions of the so-called Cotton Control Act, being Public #169 of the 73rd Congress, approved April 21, 1934, 48 Stat. A. L. 598- Chapter 157, U. S. C. Title 7, Sections 725, et seq., it was entitled to obtain exemption certificates to cover, and it was compelled under the provisions of said act to pay, and it did pay, to the defendant, but under protest, as tax on said excess cotton, the sum of Thirteen Thousand Sixty-four and 52/100 dollars ($13,064.52), upon the dates and in the amounts as follows:

On December 21, 1934, the sum of $11,193.99;

On January 26, 1935, the sum of $1870.53.

II

That subsequent to the payment of said sum of money, in order to obtain the release of said excess cotton, plaintiff filed due claim with said defendant for the refund of said amount so paid, which claim was in due course denied and rejected by the Commissioner of Revenue of the United States, in pursuance of which, this suit was filed.

[fol. 17]

III

That under the terms of the said act, the United States Government had, and there was fixed by the said Act, a lien upon plaintiff's said excess cotton equal to 5.67 per pound, and plaintiff was forbidden to transport the said cotton or to sell or dispose of the same until the said tax was paid.

IV

That said cotton was all ginned by the Santo Tomas Gin Co., who filed monthly returns with said defendant for the months of October, November, and December, 1934, as the ginner of said cotton, which said returns showed a total tax due of Thirteen Thousand Sixty-four and 52/100 dollars ($13,064.52).

And from the Facts thus found, the court Concludes:

As a matter of law that the so-called tax attempted to be imposed and which was imposed by said Cotton Control Act,

was a tax and charge upon the producer and not upon the ginner; and that by the enactment of said statute, Congress intended to control and regulate the production of cotton in the United States, and the so-called tax was a mere incident of such regulation.

The court further concludes that the said Cotton Control Act is unconstitutional and especially offends against the provisions of the tenth amendment to the Constitution of the United States; and that the tax in question was illegally assessed and unlawfully collected and should be refunded to the plaintiff, together with interest thereon at the rate of six per cent (6%) per annum from the respective dates of the payment thereof as hereinbefore found.

Accordingly, a Judgment may be entered in favor of the plaintiff in pursuance of the foregoing Findings and Conclusions, to which the defendant, by his attorneys of record, duly accepts.

Done at Las Cruces, New Mexico, this 30th day of January, 1937.

Colin Neblett, United States District Judge.

[fol. 18] In United States District Court

Judgment—Filed January 30, 1937

Upon the findings of fact and conclusions of law, found and stated by the Court after consideration of the pleadings and stipulation of facts and the written briefs of the parties, the same having been filed herein

It Is Considered, Ordered and Adjudged That the plaintiff, Stahmann Farms, a copartnership composed of D. F. Stahmann, Anna M. Stahmann, and Joyce H. Stahmann, do have and recover of and from the defendant, S. P. Vidal, as Collector of Internal Revenue for the District of New Mexico, the sum of Thirteen Thousand Sixty-four and 52/100 (13,064.52) Dollars, with interest on Eleven Thousand One Hundred Ninety-three and 99/100 (11,193.99) Dollars of said amount from Dec. 21, 1934, and on Eighteen Hundred Seventy and 53/100 (1,870.53) Dollars of said amount from Jan. 26, 1935, at the rate of six per centum per annum, and all costs.

To which the defendant by his attorneys of record duly excepts.

Done at Las Cruces, New Mexico, this 30th day of January, 1937.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed April 30, 1937

To the above entitled Court and to the Honorable Colin Neblett, Judge thereof:

Your petitioner, the defendant in the above entitled case, feeling aggrieved by the judgment as entered herein in favor of said plaintiff on January 30, 1937, prays that this appeal be allowed, and that citation be issued as provided by law and that a transcript of the record of the proceedings, and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Tenth Circuit, under the rules of such Court in such cases made and provided, and in connection with this petition, petitioner presents Assignment of Errors, dated April 29, 1937.

Wm. J. Barker, United States Attorney. Gilberto Espinosa, Assistant U. S. Attorney.

[fol. 19] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 30, 1937

In the above entitled action, the defendant having filed its petition for an order allowing it to appeal from the judgment entered in the above entitled cause on January 30, 1937;

It Is Ordered that said appeal from said judgment to the United States Circuit Court of Appeals for the Tenth Circuit be and the same is hereby allowed to the defendant, and that a certified copy of the record, bill of exceptions, exhibits, stipulations and pleadings and all proceedings herein be transmitted to the said United States Circuit Court of Appeals.

Dated at Santa Fe, New Mexico, this 30th day of April, A. D. 1937.

Colin Neblett, United States District Judge.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed April 30, 1937

The defendant makes and files the following Assignment of Errors upon which it will rely for the prosecution of

its appeal from the Judgment of this Court entered on the 30th day of January, 1937, as follows, to wit:

1

That the Court erred in holding that the Act of April 21, 1934, Chapter 157, 48 Stat. 598, as amended by the Act of June 20, 1934, Chapter 687, 48 Stat. 1184, commonly known as the Bankhead Cotton Control Act was unconstitutional and void.

2

That the Court erred in holding that the Act of April 21, 1934, as amended, violated the tenth amendment to the Federal Constitution.

3

That the Court erred in holding that the Act of April 21, 1934, as amended, was an act regulating and controlling the production of cotton.

4

That the Court erred in holding that the tax imposed under the Act of April 21, 1934, as amended, was a mere incident of such regulation and control of the production of cotton.

[fol. 20]

5

That the Court erred in failing and refusing to hold that the Act of April 21, 1934, as amended, was a proper exercise of the taxing power of Congress as authorized under the Federal Constitution

6

That the Court erred in failing and refusing to hold that the Act of April 21, 1934, was a proper exercise of the power of Congress under the Federal Constitution to regulate interstate and foreign commerce.

7

That the Court erred in holding that the tax imposed under the Act of April 21, 1934, as amended, was a tax upon the producer of cotton and not a tax upon the ginner of cotton.

8

That the Court erred in holding that the sum sought to be recovered by the plaintiff in the above entitled action was unlawfully collected from him by the defendant.

9

That the Court erred in holding that the plaintiff is entitled to judgment against the defendant and in entering judgment for the plaintiff in the sum of $13,064.52, or for any amount and in holding that the plaintiff was entitled to have judgment against the defendant for interest on $11,193.99, from December 21, 1934 and on $1,807.53 from January 26, 1935, at the rate of six per centum per annum or in any amount or any part of such sum for the reason that the facts stipulated by the parties do not support such judgment.

10

That the Court erred in failing and refusing to find specially that the facts were as agreed upon by the parties in their stipulation of facts for the reason that the evidence of such facts is undisputed and there is no evidence in the record to support findings to the contrary.

11

That the Court erred in failing and refusing to find as a fact as requested by the defendant in paragraph four of [fol. 21] his request for special findings of fact that upon the returns filed by the Santo Tomas Gin Company of Mesquite, New Mexico, for the months of October, November and December, 1934, assessments were made against the Santo Tomas Gin Company as follows:

"Cotton ginning:

Oct.-Nov. 1934	P.T. 1934 Dec.	P. 8000 L. 7	$11,193.99	
		12/19/34	$11,193.99	PD.
Dec. 1934	P.T. 1935 Jan.	P. 8001 L. 0	$ 1,870.53	
		1/25/35	$ 1,870.53	PD.

The above tax was paid by checks drawn by Stahmann Farms payable to the Collector of Internal Revenue as follows:

Check No. 1571, for $9,131.44 dated November 27, 1934, drawn on the State National Bank of El Paso, Texas,

cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1584, for $1,550.23, dated November 28, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1728, for $512.32, dated December 13, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934, and

Check No. 135, dated January 19, 1935, for $1,870.53, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, January 26, 1935,"

for the reason that the evidence of such facts is undisputed and there is no evidence in the record to support a finding to the contrary.

12

That the Court erred in failing and refusing to find as a fact as requested by the defendant in paragraph five of his request for special findings of fact that the Santo Tomas Gin Company declined to deliver the ginned cotton to the plaintiff until the assessments made against it were paid and that the plaintiff paid the tax by check drawn by the [fol. 22] Stahmann Farms payable to the Collector of Internal Revenue in the amounts listed above for the reason that the evidence of such fact is undisputed and there is no evidence in the record to support a finding to the contrary.

13

That the Court erred in failing and refusing to find as a fact, as requested by the defendant in paragraph six of his request for special findings of fact that the Collector of Internal Revenue applied the above payments made by the Stahmann Farms against the assessments outstanding on his books under the name of the Santo Tomas Gin Company, Mesquite, New Mexico, for the reason that the evidence for such fact is undisputed and there is no evidence in the record to support a finding to the contrary.

14

That the Court erred in failing and refusing to find as a fact as requested by the defendant in paragraph nine of his

request for special findings of fact that under the terms of Section Two C of the Act of April 21, 1934, as amended, there was fixed as the maximum amount of the cotton crop harvested in the crop year 1934-1935 that might be marketed exempt from the payment of the tax by said act levied 10,000,000,500 pound bales and that there was produced in the United States in the crop year 1934-1935, according to New York Cotton Exchange, Basic data, 9,637,000 bales of cotton of 500 pounds each for the reason that the evidence of such fact is undisputed and there is no evidence in the record to support a finding to the contrary.

15

That the Court erred in finding as a fact that the amount paid by the plaintiff to the defendant under the terms of the Act of April 21, 1934, as amended, were paid under protest for the reason that there is no evidence in the record to support such finding.

16

That the Court erred in failing and refusing to find that upon the facts and the law, judgment must be entered in favor of the defe dant and against the plaintiff herein.

[fol. 23]

17

That the Court erred in overruling the defendant's motion for judgment for the reason that the undisputed evidence in the record fully supports the defendant's motion for judgment and the undisputed evidence in the record does not support a judgment against the defendant and in favor of the plaintiff.

18

That the Court erred in refusing to grant the defendant's motion for judgment and in refusing to enter judgment for the defendant and against the plaintiff herein for the reason that the undisputed evidence supports a judgment in favor of the defendant and does not support a judgment in favor of the plaintiff and against the defendant.

19

That the Court erred in failing and refusing to find that the pleadings and the evidence in this case were insufficient

in law to enter judgment in favor of the plaintiff and against the defendant for the reason that the pleadings and the undisputed evidence in the record require a judgment in favor of the defendant and do not support a judgment in favor of the plaintiff.

Wherefore defendant prays that said judgment be reversed and for such other and proper relief as to the Court may appear fit and proper.

Dated this 30th day of April, 1937.

Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL—Filed April 30, 1937

To William D. Bryars, Clerk of the United States District Court for the District of New Mexico:

You are hereby requested to make a Transcript of Record to be filed in the United States Circuit Court of Appeals for the Tenth Circuit, pursuant to an appeal allowed in the [fol. 24] above entitled cause and to include in said Transcript of Record the following papers:

1. Complaint of Plaintiff.
2. Stipulation extending time to answer to June 29, 1936.
3. Stipulation extending time to answer to August 10, 1936.
4. Defendant's answer.
5. Stipulation waiving Jury Trial.
6. Defendant's Amended Answer.
7. Stipulation as to facts, etc.
8. Stipulation filed December 18, 1936.
9. Defendant's request for Special Findings of Fact and Conclusions of Law and Motion for Judgment, with the Court's endorsement of Refusal.
10. Findings of Fact and Conclusions of Law.
11. Judgment of Court.
12. Petition for Appeal.
13. Order allowing Appeal.

14. Citation.
15. Assignment of Errors.
16. This Praecipe.
17. Clerk's Certificate.

Dated April 29, 1937.

Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

REFERENCE AS TO CITATION

[Citation in proper form, directed to appellees, was issued on April 30, 1937, and on May 11, 1937, service of said citation was acknowledged by counsel for appellees.]

[fol. 25] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 26] IN UNITED STATES DISTRICT COURT

Bill of Exceptions

Be it remembered that on November 23, 1936, the above entitled cause came on for trial at Las Cruces, New Mexico, upon the issues joined therein, before Hon. Colin Neblett, sitting as a judge of said court without a jury, a jury having been waived by the parties. W. C. Whatley appeared for the plaintiff. William J. Barker, United States Attorney, and A. Gilberto Espinosa, Assistant United States Attorney, appeared for the defendant. The following proceedings were had:

STIPULATION TO STRIKE, ETC.

Thereafter, a stipulation signed by counsel for both parties, and which read as follows, was filed with the Court on December 16, 1936:

[The stipulation in identical form appearing at page 10 of this record is not reprinted here.]

STIPULATION OF FACTS, ETC.

At the hearing mentioned above a stipulation of facts, signed by counsel for both parties, and which read as follows, was offered and received in evidence:

[The stipulation in identical form appearing at page 7 of this record is not reprinted here.]

REQUEST FOR FINDINGS OF FACT, ETC.

Whereupon the plaintiff moved for judgment in its favor and the defendant moved the Court to make the following findings of fact and conclusions of law, and to enter judgment in his favor:

[Defendant's request for special findings of fact and conclusions of law and motion for judgment appearing in identical form at page 11 of this record is not reprinted here.]

Thereupon the Court took the case under advisement.

[fol. 27] FINDINGS OF FACT, CONCLUSIONS OF LAW, ETC.

Thereafter, on January 30, 1937, the Court made findings of fact substantially as requested by the defendant, except that the Court failed to find the facts requested by the defendant in paragraphs IV, V, VI, and IX of his request for special findings of fact, to which failure to make the findings requested the defendant duly excepted.

And on January 30, 1937, the Court made conclusions of law in favor of the plaintiff and against the defendant, and refused to make conclusions of law as requested by the defendant, to which failure to make the conclusions of law requested the defendant duly excepted.

And on January 30, 1937, the Court overruled the defendant's motion for judgment, to which ruling the defendant duly excepted, and gave and entered judgment in favor of the plaintiff, to which judgments and all orders and rulings contained therein the defendant duly excepted.

For as much as the matters and things set forth above do not fully appear of record, the defendant tenders and presents the foregoing as his bill of exceptions in the above

cause and prays that the same be settled, allowed, and signed and sealed, and made a part of the record in the cause, by this Court pursuant to the law in such cases.

Wm. J. Barker United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for the Defendant.

Approved: W. C. Whatley, Attorney for the Plaintiff.

IN UNITED STATES DISTRICT COURT

ORDER APPROVING AND SETTLING BILL OF EXCEPTIONS

I, the undersigned, United States District Judge who presided at the trial of the above entitled cause, do hereby certify that the foregoing Bill of Exceptions duly and timely proposed by counsel for the defendant and approved by counsel for the plaintiff, contains all of the testimony, stipulations, rulings, orders and other proceedings had upon the [fol. 28] trial of the cause, and that all of the evidence set out in the foregoing Bill of Exceptions is in the opinion of the said District Judge necessary and proper for the presentation of the questions presented by said Bill of Exceptions, and I hereby settle and allow the foregoing Bill of Exceptions as a full, true, and correct Bill of Exceptions in the above cause and order the same filed as a part of the record herein.

I further certify that the foregoing Bill of Exceptions conforms to all local rules relating to the presenting, settling, and filing of a Bill of Exceptions, and that the foregoing Bill of Exceptions is presented, settled, and allowed and ordered filed within the term of this Court in which the judgment and decision in said cause was rendered.

Dated this 26th day of May 1937.

Colin Neblett, District Judge.

IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL PRAECIPE—Filed June 3, 1937

To William D. Bryars, Clerk of the United States District Court for the District of New Mexico:

You are hereby requested to make a Supplemental Transcript of the Record to be filed in the United States Circuit

Court of Appeals for the Tenth Circuit, pursuant to appeal allowed in the above entitled cause and to include in said Supplemental Transcript of Record the following:

1. Bill of Exceptions, as settled by Court.
2. Clerk's Certificate.
3. This Præcipe.

Dated May 27th, 1937.

Wm. J. Barker, United States Attorney; Gilberto Espinosa, Assistant U. S. Attorney, Attorneys for Defendant.

I hereby acknowledge receipt of a copy of the above Præcipe this 31st day of May, 1937.

W. C. Whatley, Attorney for Plaintiff.

[fols. 29-30] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 31] In United States Circuit Court of Appeals

Order of Submission—September 22, 1937

This cause came on to be heard, Fred E. Youngman, Esquire, appearing for appellant, no one appearing for appellees.

Thereupon this cause was argued by counsel for appellant and submitted to the court.

In United States Circuit Court of Appeals, Tenth Circuit

No. 1568—September Term, 1937

Before Bratton and Williams, Circuit Judges, and Symes, District Judge

Opinion—December 27, 1937

Symes, District Judge, delivered the opinion of the court:

Plaintiff below (Stahmann Farms), a co-partnership, recovered judgment for $13,064.52 against the appellant (de-

fendant below), in the District Court of the United States for the District of New Mexico, alleged to have been paid as taxes under the so-called Bankhead Cotton Act (Act of April 21, 1934), C. 157, 48 Stat. 598. The defendant appeals. Two questions are briefed and argued. 1. Is the plaintiff the proper party to maintain this action. 2. Is the so-called Bankhead Cotton Act (supra), constitutional.

[fol. 32] A jury trial was waived and the case heard by the court upon the facts admitted by the pleadings and a written stipulation filed by the parties.

It appears that during the crop year 1934-5 appellee, Stahmann Farms was engaged in the growing of cotton in Dona Ana County, New Mexico, and had been for many years prior thereto, cultivating over 2,000 acres. During the above year it produced a quantity of cotton in excess of the allotment it was entitled to exemption certificates to cover. It delivered this cotton to the Santo Tomas Gin Company to be ginned. The latter ginned it and filed the fequired monthly returns with the Collector, which showed a tax due of $13,064.52, of which amount $11,193.99 was assessed against the gin company in December, 1934, and the balance $1870.53, in the January following. The gin company declined to deliver the ginned cotton to the appellee until the assessments against it were paid. Whereupon appellee paid these sums to the Collector with its four checks drawn to his order. He applied the same against the assessments outstanding on his books against the Santo Tomas Gin Company.

The lower court held the Act unconstitutional; that the tax was attempted to be imposed against the producer and not the ginner; was illegally assessed and collected and should be returned to the Stahmann Farms.

1. The Bankhead Cotton Act (since repealed), imposes a tax upon cotton ginned in excess of certain exemptions allowed by the Act.

Sec. 4 (a). "There is hereby levied and assessed on the ginning of cotton hereafter harvested during a crop year with respect to which this act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton," etc.

Sub-section (c) of § 4 requires the ginner to make monthly returns of all cotton ginned to the Collector and makes him liable for the payment of the tax. Furthermore the regulations of the Commissioner of Internal Revenue say (Art. 13):

"Liability for the tax attaches to the ginner immediately upon ginning of the cotton."

[fol. 33] The Collector made no attempt to collect the assessment from the appellee and there is no provision in the statute imposing liability therefor upon the producer, except under circumstances not here pertinent. Unginned cotton is exempt from the tax and it makes no difference as to the ginner's liability, whether he processes his own or someone else's cotton. Stahmann Farms was a stranger to the Collector throughout and the fact that the ginner required it to pay the tax before returning to it its cotton does not change the situation. Clearly the Act taxes the processing of cotton and makes the ginner primarily liable.

The law applicable to this situation is thus stated in 61 C. J. p. 949, etc., § 1226:

"Payment of taxes by a stranger, a mere volunteer • • • cannot be made the foundation of any right or claim on the part of such third person."

§ 1227, p. 950:

"But a person cannot make the true owner of property his debtor by a mere voluntary payment of taxes thereon."

P. 986, § 1264:

"A payment is voluntary, in the sense that no action lies to recover back the amount, not only where it is made willingly and without objection, but in all cases where there is no compulsion or duress, or any immediate and urgent necessity therefor, as a means of preventing an immediate seizure of the taxpayer's person or property,' etc.

"So, ordinarily, payment is voluntary where there has been no demand for the taxes, no steps taken to enforce them, and no pressure exerted to compel their payment."

And see § 1283, p. 1005, to the effect that the burden is upon the taxpayer to prove the payment was not voluntary. In

the following cases recovery of taxes paid by volunteers under circumstances more or less similar to those of the instant case were denied. Central Aguirre Sugar Co. v. U. S., 2 Fed. Sup. 538; Wourdack v. Becker, 55 Fed. (2d) 840 (C. C. A. 8th), certiorari denied 286 U. S. 548; Clift & Goodrich v. U. S., 56 Fed. (2d) 751 (C. C. A. 2nd), cer-
[fol. 34] tiorari denied 287 U. S. 617; Ohio Locomotive Crane Co. v. Denman, 73 Fed. (2d) 408 (C. C. A. 6th), certiorari denied 294 U. S. 712; Hammerstrom County Treasurer v. Toy Nat. Bank of Sioux City, 81 Fed. (2d) 628 (C. C. A. 8th).

Compare the facts in Railroad Company v. Commissioners, 98 U. S. 541, where the court said this language from Wabaunsee County v. Walker, 8 Kansas 431, is a correct statement of the rule of the common law.

"Where a party pays an illegal demand with a full knowledge of all the facts which render such demand illegal, without an immediate and urgent necessity therefor or unless to release his person or property from detention, or to prevent an immediate seizure of his person or property, such payment must be deemed voluntary and cannot be recovered back."

Little v. Bowers, 134 U. S. 547; U. S. v. New York and Cuba Mail Steamship Co., 200 U. S. 488; Blanks v. Hazen, 85 Fed. (2d) 384 (C. C. A. Dist. of Columbia); Ward v. Love County, 253 U. S. 17; U. S. v. Edmonston, 181 U. S. 500; Chesebrough v. U. S., 192 U. S. 253.

2. Suitors may not require the decision on a constitutional question in the absence of a showing that otherwise irreparable injury will result. United Gas Co. v. R. R. Comm'n., 278 U. S. 300, at p. 310. By parity of reasoning this rule applies to a plaintiff having no cause of action. And following a long line of decisions we refrain from passing upon the constitutionality of an act of Congress not squarely presented and necessary to a decision of the case.

The last statement of the Supreme Court of this principle is in Tennessee Pub. Co. v. Amer. Bank, 299 U. S. 18, at p. 22:

"It is a familiar rule that the court will not anticipate the decision of a constitutional question upon a record which does not appropriately present it." Citing—

Liverpool, N. Y. & P. S. S. Co. v. Commissioners, 113 U. S. 33, 39; Cincinnati v. Vester, 281 U. S. 439, 448, 449; Arizona v. California, 283 U. S. 463, 464. The U. S. Circuit Court of Appeals for the Fifth Circuit has decided the constitutional question in U. S. v. Lee Moor, Dec. 9, 1937.

We conclude the plaintiff was not the proper party to maintain this action.

[fol. 35-36] The judgment is reversed and the cause remanded with directions to dismiss the complaint.

In United States Circuit Court of Appeals

Judgment—December 27, 1937

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of New Mexico and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to the said district court with directions to dismiss the complaint; and that S. P. Vidal, Collector of Internal Revenue for the District of New Mexico, appellant, have and recover of and from Stahmann Farms, a copartnership composed of D. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, appellees, his costs herein and have execution therefor.

[fols. 37-46] Petition for rehearing, covering 9 pages, filed January 25, 1938, omitted from this print. It was denied, and nothing more by order of February 5, 1938.

[fol. 47] In United States Circuit Court of Appeals

Order Denying Petition for Rehearing—February 5, 1938

This cause came on to be heard on the petition of appellees for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF MANDATE—Filed February 16, 1938

To said Honorable Court:

Come now D. F. Stahmann, Anna M. Stahmann, and Joyce F. Stahmann, doing business as partners under the name Stahmann Farms, appellees in the above styled and numbered cause, and respectfully show to the court that they contemplate applying to the Supreme Court of the United States for a writ of certiorari in this case. They will promptly prepare and file said application. No damage will be sustained by appellant if the mandate is withheld, and not issued to the trial court.

Wherefore, appellees move the court to withhold the issuance of its mandate for a period of thirty days, as provided in Rule 29 of this court.

W. C. Whatley, of Las Cruces, N. M.; Thornton Hardie, Box 419, El Paso, Texas, Attorneys for Appellees.

STATE OF TEXAS,
County of El Paso:

I, Thornton Hardie, being duly sworn, state that the matters set forth in the foregoing motion are true, and that I am one of the attorneys for appellees and I make this affidavit in their behalf and that this application is not made for delay, but is made in good faith, and that a copy of this motion has on this day been placed in the United States mail, addressed to Mr. F. E. Youngman, one of the attorneys for the appellant in the above cause.

Thornton Hardie

[fols. 48-49] [File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER GRANTING MOTION FOR STAY OF MANDATE—February 16, 1938

This cause came on to be heard on the motion of appellees for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 50] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 25, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted, limited to the question whether the petitioners were the proper parties to maintain the suit.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 42,358. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 877. D. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, doing business as Stahmann Farms Company, petitioners, vs. S. P. Vidal, Collector of Internal Revenue for the District of New Mexico. Petition for a writ of certiorari and exhibit thereto. Filed March 16, 1938. Term No. 877, O. T., 1937.

FILE COPY

No. [redacted] 12

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1937.

D. F. STAHMANN, ANNA M. STAHMANN and JOYCE F. STAHMANN, doing business as Stahmann Farms Company, a partnership,

Petitioners,

versus

S. P. VIDAL, Collector of Internal Revenue for the District of New Mexico,

Respondent.

PETITION AND BRIEF FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

THORNTON HARDIE,
Of El Paso, Texas,
Attorney for Petitioners.
W. C. WHATLEY,
Of Las Cruces, New Mexico,
R. NEILL WALSHE,
Of El Paso, Texas,
Of Counsel.

ROBERT H. JACKSON,
Solicitor General of the United States,
Washington, D. C.,
F. E. YOUNGMAN,
Special Assistant to the Attorney General,
Washington, D. C.,
Attorneys for Respondent.

SUBJECT INDEX

INDEX OF AUTHORITIES

No._____

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D., 1937.

D. F. STAHMANN, ANNA M. STAHMANN and JOYCE F. STAHMANN, doing business as Stahmann Farms Company, a partnership,

Petitioners,

versus

S. P. VIDAL, Collector of Internal Revenue for the District of New Mexico,

Respondent.

PETITION AND BRIEF FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

TO THE SUPREME COURT OF THE UNITED STATES:

Your Petitioners, D. F. Stahmann, Anna M. Stahmann, and Joyce F. Stahmann, respectfully request this Court to review by Writ of Certiorari a Judgment of the United States Circuit Court of Appeals for the Tenth Circuit, in which that Court reversed a decree of the District Court for the District of New

Mexico. The Trial Court had rendered a Judgment in favor of your Petitioners against S. P. Vidal, Collector, for the sum of $13,064.52, with interest on $11,193.99 from December 21, 1934, at 6% per annum and interest on $1,870.53 from January 26, 1935, at 6% per annum and costs of suit. The Judgment was for the amount of taxes paid by Plaintiffs as producers of cotton in excess of the quota allowed them under what is commonly known as the Bankhead Cotton Control Act of 1934, the Trial Court having found that the Act was unconstitutional, and that Plaintiffs were entitled to a refund of the tax paid. The appellate court held that the tax was levied against the ginner of the cotton, and that Plaintiffs, the producers, were mere volunteers and could not recover.

A similar case was filed by Stahmann Farms against the United States in the District Court of the United States for the Western District of Texas, at El Paso. District Judge Boynton reached the same conclusion which was reached by the United States District Judge for the District of New Mexico, and entered Judgment against the United States for the recovery of the taxes paid by Stahmann Farms. The case is now pending in the United States Circuit Court of Appeals of the Fifth Circuit in case No. 8636, United States of America, Appellant, v. D. F. Stahmann and others.

A.

SUMMARY STATEMENT OF THE MATTERS INVOLVED

1. Was the producer of cotton raised during the year 1934 who paid the taxes levied by the Bankhead Act, in order to be able to obtain possession of his cotton from the ginner and to sell it, a mere volunteer, and therefore not entitled to a refund of the tax, even though the tax was in fact invalid because in violation of the Constitution of the United States?

2. When it has been shown that the producer of cotton could not move his cotton from the gin, transport it beyond the county or sell it without paying the taxes levied by the terms of the Bankhead Act with reference to said cotton, and that because of the provisions of the Bankhead Act the producer could not make any beneficial use of said cotton without paying said tax, was the producer who, under such circumstances, paid said tax a mere volunteer, and not entitled to recover said taxes, if they were in fact invalid, because in violation of the Constitution of the United States?

3. Were the so-called taxes levied under the Bankhead Cotton Control Act valid and enforceable taxes?

4. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Cotton Control Act invalid because of the fact that it was a supplement to the invalid Agricultural Adjustment Act, and because its taxes were levied to be used solely to pay benefits under the Agricultural Adjustment Act, to pay the expenses of the administration of the Bankhead Act, and to assure compliance of farmers with and to supplement the Agricultural Adjustment Act?

5. Was the so-called ginning tax levied and assessed in ac-

cordance with the terms of the Bankhead Act invalid because in violation of the Tenth Amendment to the Constitution providing: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"?

6. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because in violation of the Fifth Amendment to the Constitution, providing: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty or property, without due process of law;* nor shall private property be taken for public use, without just compensation"?

7. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because in violation of Article 1, Section 9, cl. 4 of the Constitution, providing: "No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken"?

8. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because in violation of Article 1, Section 2, cl. 3 of the Constitution, providing: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers"?

9. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because

in violation of Article 1, Section 8, cl. 1, providing: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"?

10. Was the so-called ginning tax levied and assessed in accordance with the terms of the Bankhead Act invalid because in violation of Article 1, Section 1, providing: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives"?

We shall state sufficient of the pleadings and of the evidence to show that the above questions are involved in the decision of this case.

PLEADINGS

Plaintiffs' Original Petition, filed May 5, 1936 (R. 1 - 3)

1. Plaintiffs, during the crop year 1934-1935, were engaged in the growing of cotton in Dona Ana County, New Mexico, cultivating a plantation having an acreage of more than 2000 acres, and which they had been cultivating for many years.

2. During the year 1934, they produced a quantity of cotton in excess of the quota permitted them under the Bankhead Cotton Control Act, and in order to sell or to market the cotton which they had raised in excess of said quota, they were compelled to obtain bale tags for said cotton, for which they were compelled to pay, under protest, the sum of $13,064.52, payment being made by Plaintiffs by their checks payable to the order of S. P. Vidal, Collector of Internal Revenue of the United States for the District of New Mexico, who collected the amounts specified in said checks. The tax was exacted from Plaintiffs by the Defendant pursuant to the provisions of the Bankhead Act. The assessment and collection of said tax by the Defendant was illegal and wrongful, in that said Act was void and unconstitutional; and the Act furnished no authority to the Defendant to demand, exact, receive, and retain said tax.

3. On March 6, 1935, Plaintiffs duly filed with the Defendant claim for refund in accordance with the provisions of law and the regulations of the Secretary of Interior, and said claim was forwarded to the Commissioner of Internal Revenue and was by him denied and rejected, and due notice thereof given to the Plaintiffs, and Plaintiffs pray Judgment for the recovery of said tax, with interest.

The pleading was verified by D. F. Stahmann, one of the Plaintiffs.

Defendant's Amended Answer, filed October 15, 1936 (R. 5 - 6)

1. Defendant admits the allegations of the first paragraph of Plaintiffs' Complaint.

2. Defendant admits that during the crop year 1934-1935 Plaintiffs produced a quantity of cotton in excess of the quota allowed them under the Bankhead Act, and that the sum of $13,064.52 was paid to Defendant on the dates and in the amounts alleged in Paragraph 2 of the Complaint. Defendant says that he denies that the amounts were paid by the Plaintiffs under protest or otherwise, and alleges that if such amounts were paid to him by the Plaintiffs they were paid to discharge the liability imposed upon a person or persons other than the Plaintiffs by the Act of April 21, 1934. Defendant denies that the Plaintiffs were compelled to pay such amounts to him, and that he illegally assessed or collected any sums from the Plaintiffs, or from any person whose liability under the Act of April 21, 1934, was discharged by the Plaintiffs.

3. The Defendant admits that on March 6, 1935, Plaintiffs duly filed a claim on the forms provided by the Treasury Department for the refund of said sum of $13,064.52; that the Commissioner of Internal Revenue rejected said claim on August 22, 1935. The allegations not admitted were denied.

The answer was verified by the Defendant.

EVIDENCE

(R. 7 - 11)

The following facts were established by admissions and stipulations. The facts admitted by the Defendant's answer were agreed to. It was further agreed that the facts upon which the Court might pass as pertinent to the issues in this case were as follows:

1. During the crop year 1934-1935, Plaintiffs produced a quantity of cotton in excess of the quota allowed them under the Bankhead Act.

2. Plaintiffs delivered their cotton to the Santo Tomas Gin Company, of Mesquite, New Mexico, for the purpose of being ginned.

3. Said Company ginned Plaintiffs' cotton, and thereafter filed monthly returns with the Collector of Internal Revenue for New Mexico for the months of October, November and December, showing a total tax due in the amount of $13,064.52.

4. Upon the returns referred to, assessments were made against the Santo Tomas Gin Company, as follows:

"Cotton ginning:

Oct.-Nov. 1934	P. T. 1934 Dec. P. 8000 L. 7	$11,193.99
	12/19/34	11,193.99 PD.
Dec. 1934	P. T. 1935 Jan. P. 8001 L. O	$ 1,870.53
	1/25/35	1,870.53 PD."

The above tax was paid by checks drawn by Stahmann Farms, payable to the Collector of Internal Revenue, as follows:

Check No. 1571 for $9131.44, dated November 27, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1584, for $1550.23, dated November 28, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1728, for $512.32, dated December 13, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934; and

Check No. 135, dated January 19, 1935, for $1870.53 drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, January 26, 1935.

5. Santo Tomas Gin Company declined to deliver the ginned cotton to Plaintiffs until the above assessments were paid and Plaintiffs paid the said tax by checks drawn by Stahmann Farms payable to the Collector of Internal Revenue in the amounts hereinbefore listed.

6. The Collector of Internal Revenue applied said payments against the assessments which appeared on his books under the name of Santo Tomas Gin Company, Mesquite, New Mexico.

7. On March 6, 1935, Plaintiff filed a claim for refund for $13,064.52, based upon the alleged unconstitutionality of the Bankhead Act.

8. The Commissioner of Internal Revenue rejected the claim on August 22, 1935.

The original stipulation purported to state the issues of law (R. 9), but this stipulation was withdrawn (R. 10).

B.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

THE CIRCUIT COURT OF APPEALS HAS HELD:

1. That the tax paid by Petitioners was a liability of the ginner, not the Petitioners, that Petitioners were strangers to the tax and volunteers, and that payment by them cannot be made the basis of a claim and suit for a refund of the tax, even though the tax were unconstitutional.

2. That taxes of this character, even though the law which provides for them be unconstitutional, cannot be recovered by the producers who actually paid them to the Defendant Collector, when they were paid without compulsion or duress.

3. That under the Bankhead Act, and under the facts of this case showing that Petitioners could not obtain possession of their cotton, sell it, transport it out of the County except for storage, open a bale of it or make any beneficial use of it, unless the tax were first paid, there was no compulsion or duress which justified the Petitioners in paying the tax and suing for a refund.

4. That the Petitioners in this case were not the proper parties to bring this suit for a refund.

5. That it should refrain from holding the Bankhead Cotton Control Act unconstitutional, because since Petitioners were not the proper parties to maintain this suit, it was not necessary to rule upon such question.

6. That the Judgment of the District Court allowing Petitioners a recovery should be reversed, and that this case should be remanded with directions to dismiss the Complaint.

THE CIRCUIT COURT OF APPEALS HAS DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW HEREAFTER STATED WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THE SUPREME COURT, AND HAS ERRONEOUSLY REFUSED TO HOLD THAT THE BANKHEAD COTTON CONTROL ACT IS UNCONSTITUTIONAL.

(1) The facts showed that under the terms of the Bankhead Act, the taxes paid by Petitioners were required to be paid in order for Petitioners to obtain possession of their cotton from the ginner, to sell it, to move it beyond the county in which it was ginned, or to make any beneficial use of it. Under such circumstances, could Petitioners, who were the producers and owners of the cotton, recover the taxes which they had paid if the taxes levied by the terms of the Bankhead Act were invalid?

(2) The facts showed that the ginner of the cotton belonging to Petitioners would not permit them to have possession of their cotton unless the taxes assessed by the Bankhead Act with reference to such cotton were first paid by them. Petitioners, in order to obtain possession of their cotton, and to use and dispose of it, paid the taxes to the Defendant collector by their own checks, payable directly to him, and which were cashed by him. A claim for refund was duly filed by Petitioners and rejected by the Commissioner, and notice of such action was given to Petitioners and no refund was made. Under such circumstances, was the Trial Court correct in entering a Judgment in favor of Petitioners for a refund of said taxes, if they were levied and assessed under a void Act?

(3) The Bankhead Act provides for a ginning tax of one-half of the average central market price of cotton, upon all cotton raised in the United States, but exempts from such tax, cotton raised on each particular farm which is not in excess of

the quota fixed for that farm by the Secretary of Agriculture, and provides that payment of the tax may be postponed while the cotton is in storage, but must be paid before it is moved for sale or use. The terms of the Act itself show that the tax is in the nature of a penalty assessed against each farmer for raising more cotton than the Secretary of Agriculture has fixed for his quota. Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Peti. oners was invalid because in violation of the Tenth Amendment to the Constitution, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people", and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(4) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid, because in violation of the Fifth Amendment to the Constitution, which provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation", and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(5) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid,

because in violation of Article 1, Section 9, cl. 4 of the Constitution, providing: "No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken", and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(6) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 2, cl. 3, of the Constitution providing: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers," and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(7) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 8, cl. 1, providing: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"; and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(8) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 1, providing: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives", and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

PRAYER FOR WRIT

WHEREFORE, your Petitioners pray that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Circuit Court of Appeals for the Tenth Circuit, commanding that Court to certify and send to the Supreme Court a full and complete Transcript of the Record and of all of the proceedings in the case numbered and entitled on its docket, "No. 1568, S. P. Vidal, Collector of Internal Revenue for the District of New Mexico, Appellant, versus Stahmann Farms, a co-partnership composed of D. F. Stahmann, Anna M. Stahmann, and Joyce F. Stahmann, Appellees", to the end that this case may be reviewed and determined by this Honorable Court, as provided by the statutes of the United States, that the Judgment of the Circuit Court of Appeals for the Tenth Circuit be reviewed and reversed, and for such other relief as may seem proper to this Court.

DATED at El Paso, Texas, this 12th day of March, A. D., 1938.

Respectfully submitted,

D. F. STAHMANN, ANNA M. STAHMANN, and JOYCE F. STAHMANN, doing business under the partnership name of Stahmann Farms,

Petitioners,

By:

THORNTON HARDIE,
Of El Paso, Texas,
Attorney for Petitioners

W. C. WHATLEY,
Of Las Cruces, New Mexico,

R. NEILL WALSHE,
Of El Paso, Texas,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINION IN THE COURT BELOW

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit is reported on pages 902 to 904, Volume 93, Federal Reporter, second series (advance sheet No. 5). It is found on pages 31 to 35 of the Record. The opinion was written by District Judge Symes, and concurred in by Circuit Judges Bratton and Williams.

II.

STATEMENT OF JURISDICTION

(a) This is a suit by D. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, doing business as Stahmann Farms Company, against S. P. Vidal, Collector of Internal Revenue of the State of New Mexico, to recover $13,064.52 paid by Plaintiffs to Defendant as taxes due by the terms of the Bankhead Act on cotton belonging to Plaintiffs, who claim that said Act is unconstitutional. Jurisdiction is based upon Section 41, Tit. 28, U. S. C. A. (R. S. of U. S., Sections 563, 629), which reads in part as follows:

"The District Courts shall have original jurisdiction as follows:

"(1) . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3000.00, and (a) arises under the Constitution or laws of the United States, . . . The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the

succeeding paragraphs of this section . . . .

"(5) *Cases under internal revenue, customs, and tonnage laws.* Fifth. Of all cases arising under any law providing for internal revenue, ... "

(b) The statutory provision which is believed to sustain the jurisdiction of this Honorable Court is Section 347, of Tit. 28, U. S. C. A. (Judicial Code, Section 240, amended). The application is filed under Section 5, Rule 38 (former rule 35) of the Rules of the Supreme Court.

(c) The Judgment of the Trial Court is dated January 30, 1937 (R. 18). The Judgment of the Circuit Court of Appeals is dated December 27, 1937 (R. 35). The Judgment denying motion for rehearing is dated February 5, 1938 (R. 47).

(d) THIS CASE INVOLVES THE DETERMINATION OF IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT BEEN BUT SHOULD BE SETTLED BY THE SUPREME COURT.

(1) The facts showed that under the terms of the Bankhead Act, the taxes paid by Petitioners were required to be paid in order for petitioners to obtain possession of their cotton from the ginner, to sell it, to move it beyond the county in which it was ginned, or to make any beneficial use of it. Under such circumstances, could Petitioners, who were the producers and owners of the cotton, recover the taxes which they had paid if the taxes levied by the terms of the Bankhead Act were invalid?

(2) The facts showed that the ginner of the cotton belonging to Petitioners would not permit them to have possession of their cotton unless the taxes assessed by the Bankhead Act with reference to such cotton were first paid by them. Petitioners, in order to obtain possession of their cotton, and

to use and dispose of it, paid the taxes to the Defendant collector by their own checks, payable directly to him, and which were cashed by him. A claim for refund was duly filed by Petitioners and rejected by the Commissioner, and notice of such action was given to Petitioners and no refund was made. Under such circumstances, was the Trial Court correct in entering a Judgment in favor of Petitioners for a refund of said taxes, if they were levied and assessed under a void Act?

(3) The Bankhead Act provides for a ginning tax of one-half of the average central market price of cotton, upon all cotton raised in the United States, but exempts from such tax, cotton raised on each particular farm which is not in excess of the quota fixed for that farm by the Secretary of Agriculture, and provides that payment of the tax may be postponed while the cotton is in storage, but must be paid before it is moved for sale or use. The terms of the Act itself show that the tax is in the nature of a penalty assessed against each farmer for raising more cotton than the Secretary of Agriculture has fixed for his quota. Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid because in violation of the Tenth Amendment to the Constitution, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people", and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(4) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid, because in violation of the Fifth Amendment to the Constitution, which provides: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the

land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation", and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(5) Under the facts of this case, as shown herein was the Circuit of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners was invalid, because in violation of Article 1, Section 9, cl. 4 of the Constitution, providing: "No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken", and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(6) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 2, cl. 3, of the Constitution providing: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers," and in refusing to affirm the Judgment directing repayment of such tax to Petitioners?

(7) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 8, cl. 1, of the Constitution, providing: "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of

the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"; and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(8) Under the facts of this case, as shown herein, was the Circuit Court of Appeals in error in refusing to hold that the law which assessed the taxes paid by Petitioners is invalid because in violation of Article 1, Section 1, of the Constitution, providing: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives", and in refusing to affirm a Judgment directing repayment of such tax to Petitioners?

(e) It is believed that the following cases sustain the jurisdiction of the Supreme Court: *George Moore Ice Cream Co., Inc., v. Rose, Collector of Internal Revenue*, 289 U. S. 373, 53 Sup. Ct. 620; *U. S. v. Butler*, 297 U. S. 1, 56 Sup. Ct. 312; *Posadas, Collector of Internal Revenue v. National City Bank of New York*, 296 U. S. 497, 56 Sup. Ct. 349.

III.

STATEMENT OF THE CASE

The statement of the case in the preceding petition, pages 3 to 9, is hereby adopted and made a part of this Brief.

The proceedings in the Circuit Court of Appeals and Petitioners' Motion for a rehearing, which was passed upon and overruled, were sufficient to raise the questions here presented. The opinion of the Circuit Court of Appeals is found on pages 31 to 35 of the Record.

The Motion for rehearing is found on page 37 of the Record, and the order overruling the Motion on page 47.

IV.

SPECIFICATION OF ERRORS

In reversing the Judgment of the Trial Court, the Circuit Court of Appeals erred in the following particulars:

(a) The Circuit Court of Appeals in reversing the Judgment of the Trial Court held that Petitioners, who produced and owned the cotton with reference to which the tax was paid, and who, by the terms of the Bankhead Act, could not move the cotton from the gin yard, sell it, open a bale of it, ship it beyond the county or make any beneficial use of it until the tax was paid, acted as mere volunteers in paying the tax, and although they duly filed the claim for a refund of the tax paid to the Defendant collector, which was denied by Commissioner of Internal Revenue, could not recover the tax, even though the Bankhead Act was unconstitutional.

(b) The Circuit Court of Appeals held that Petitioners, in paying the tax under the facts above stated, were mere volunteers, and therefore could not recover the tax paid by them, even though it was assessed under an unconstitutional statute, and even though they had complied with the conditions precedent to filing suit for a collection of the refund of the taxes.

(c) The Circuit Court of Appeals held that the Judgment of the District Court which allowed Petitioners a recovery against the Respondent for the taxes paid to Respondent should be reversed, because the taxes paid by them were not paid under compulsion or duress.

(d) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed, was in violation of the Tenth Amendment to the Constitution of the United States.

(e) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of the Fifth Amendment to the Constitution.

(f) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be refunded to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 9, cl. 4 of the Constitution.

(g) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be refunded to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 2, cl. 3 of the Constitution.

(h) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be refunded to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 8, cl. 1 of the Constitution.

(i) The Circuit Court of Appeals refused to hold that the taxes paid by Petitioners should be refunded to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 1 of the Constitution.

V.

SUMMARY OF ARGUMENT

We shall present our views under Nine Points. The Points to be discussed are applicable to the various errors of the Cir-

cuit Court of Appeals, as pointed out in the Specification of Errors. We shall, in the course of our argument, endeavor to show that the Circuit Court of Appeals erred in the paticulars above outlined.

We shall first endeavor to show that if the Bankhead Act is void, Petitioners should have been allowed to recover the taxes paid by them to Respondent. Then we shall point out why we think the Trial Court was correct in holding, and the Circuit Court of Appeals incorrect in not holding, that the Bankhead Act was unconstitutional.

VI.

ARGUMENT

First Point

The Circuit Court of Appeals erred in reversing the Judgment of the Trial Court, holding that Petitioners, who produced and owned the cotton with reference to which the tax was paid, and who, by the terms of the Bankhead Act, could not move the cotton from the gin yard, sell it, open a bale of it, ship it beyond the county or make any beneficial use of it until the tax was paid, acted as mere volunteers in paying the tax, and although they duly filed the claim for refund of the tax paid to the Defendant collector, which was denied by Commissioner of Internal Revenue, could not recover the tax, even though the Bankhead Act was unconstitutional.

Second Point

The Circuit Court of Appeals erred in holding that Petitioners, in paying the tax under the facts above stated, were mere volunteers, and therefore could not recover the tax paid by them even though it was assessed under an unconstitutional

statute, and even though they had complied with the conditions precedent to filing suit for a collection of the refund of the taxes.

It was shown that the bales of cotton with reference to which the taxes were paid by Petitioners were owned by Petitioners, and were of such character that the taxes paid were due by the terms of the Bankhead Act. It was also agreed that the Santo Tomas Gin Company, which had ginned the cotton, was in possession of it and refused to deliver the cotton to Petitioners unless they paid the tax of $13,064.52, incident to said cotton. The Cotton Control Act of 1934 (Bankhead Act) is the Act of April 21, 1934, 48 Stat. 598, c. 146, as amended by the Act of August 9, 1935 (Public Resolution 47, 74th Congress, H. J. Res. 258), and by the Act of August 24, 1935 (Pub. No. 320, 74th Congress, H. R. 8492). The repeal followed the decision of the Supreme Court in *United States v. Butler*, 297 U. S. 1, 56 Sup. Ct. 312; Act of February 10, 1936, 49 Stat. 1106.

The provisions of the Bankhead Act which are particularly important for consideration in connection with our First and Second Points are given for the convenience of the Court in the Appendix to this Brief.

Those who vote to determine whether the tax shall be levied are the producers, not the ginners. Section 3(a).

Exemptions from the tax are based upon time, manner and character or production, not upon time, manner or character of ginning. Section 4(e).

Exemptions from the tax are allowed to producers, not ginners. The producer is the one who must comply with the conditions and limitations imposed by the Secretary of Agriculture in order to obtain the exemption certificates. Section 6.

Quotas for exemptions are allowed to farms and farmers, not to gins or ginners. Section 7.

The lien of the tax is against the property of the producer, not of the ginner. Section 4(f).

It is the property of the producer that cannot be transported beyond the county except for storing, and cannot be sold, purchased or removed from the bale until the tax has been paid. Section 13(b).

The Secretary of Agriculture is authorized to make regulations protecting the interests of share croppers and tenants in the distribution of exemptions. Section 15.

It is the producer's past history and conduct that is material in fixing the exemption quota. Sections 5, 7 and 8.

That Congress had no intention that the ginner should be put to an expense in connection with the Act is shown by Section 17(b), where the ginner is to be reimbursed up to 25¢ a bale for additional expense incurred by him in connection with the administration of the Act.

If it were merely a tax on ginning, why would the tax not be assessed upon all cotton ginned, wherever and whenever raised, and regardless of the amount raised on a particular farm?

It is common knowledge that the customary charge for ginning a 500 pound bale of lint cotton is approximately $6.00, yet the tax was approximately $30.00 a bale. Clearly, the ginner was not expected to pay the tax out of his ginning charges, or out of his own funds. The ginner was used merely as a convenient collecting agent to enforce the payment of the tax.

No beneficial use can be made of cotton until it is first gin-

ned and baled, and then it cannot be used until the bale is opened. The Act made it impossible for a farmer to sell or make any beneficial use of his cotton until the tax was paid. Moreover, under the stipulations in this case, the ginner would not release the cotton to Petitioners until they personally paid the tax with their own checks, payable directly to the Defendant in this case.

We think the Circuit Court of Appeals was in error in saying:

> "The law applicable to this situation is thus stated in 61 C. J. p. 949, etc., Section 1226:
>
> 'Payment of taxes by a stranger, a mere volunter . . . cannot be made the foundation of any right or claim on the part of such third person.'
>
> "Sec. 1227, p. 950:
>
> 'But a person cannot make the true owner of property his debtor by a mere voluntary payment of taxes thereon.' "

The Circuit Court of Appeals also quotes from 61 C. J. p. 986, Section 1264, as follows:

> "'A payment is voluntary in the sense that no action lies to recover back the amount, not only where it is made willingly, and without objection, but in all cases where there is no compulsion or duress or any immediate and urgent necessity therefor, as a means of preventing an immediate seizure of the tax payer's person or property', etc."

The last of the sentence for which Judge Symes has substituted "etc." reads:

> "or of releasing his person or property from existing detention."

a rather significant omission when we note that under the admitted facts of our case the Santo Tomas Gin Company would not give up possession of the cotton until Petitioners had paid the tax. The learned Judge then says:

> "And see Sec. 1283, p. 1005, to the effect that the burden is upon the taxpayer to prove the payment was not voluntary."

It is true that 61 C. J. p. 1005, Sec. 1283, does contain the following language:

> "In particular, he must prove the fact of payment to the officer authorized by law to receive the taxes . . . and that the payment was not voluntary, but was made under duress or compulsion,"

but this language is immediately followed by the words:

"when this is necessary to a recovery."

Judge Symes in his opinion also says:

> "In the following cases recovery of taxes paid by volunteers under circumstances more or less similar to those of the instant case were denied. Central Aguirre Sugar Co. v. U. S., 2 Fed. Supp. 538, Wourdeck v. Backer, 55 Fed. (2nd) 840 (C. C. A. 8th), certiorari denied 286 U. S. 548; Clift and Goodrich v. U. S., 56 Fed. (2d) 751 (C. C. A. 2nd), certiorari denied 287 U. S. 617; Ohio Locomotive Crane Co. v. Denman, 73 Fed. (2d) 408 (C. C. A. 6th), certiorari denied 294 U. S. 712; Hammerstrom, County Treasurer v. Toy Nat. Bank of Sioux City, 81 Fed. (2d) 628 (C. C. A. 8th)."

Section 20 of the Bankhead Act reads:

> "(Sec. 20) (b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this

Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund has been duly filed with the Commissioner of Internal Revenue according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under due protest or duress. No suit or proceedings shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision therein within that time, nor after the expiration of two years from the date of the payment of such tax, penalty or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by registered mail."

26 U. S. C. A., Sections 1672 and 1673, reads:

"(a) *Limitations* - (1) *Claim.* No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

"(2) *Time.* No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claims unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.

"(b) *Protest or duress.* Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress."

We shall briefly examine the authorities cited by Judge Symes, listed above.

Central Aguirre Sugar Co. v. U. S., 2 F. Supp. 538. Here, a tax had been assessed against an *association*. The tax was paid voluntarily by a *corporation*, which had succeeded to the association's assets and become liable for its debts. The Corporation filed a claim for refund, and sued when the claim was denied. No contention was made that the law levying the tax was unconstitutional. The claim was that the tax was not due from the corporation which had paid it, but from the association. The Court pointed out that the tax was lawful as against the association, that the corporation, by succeeding to the assets of the association, had become liable for its debts, and had voluntarily paid the tax in recognition of such liability. The Court said:

"On the other hand, it plainly shows that the corporation recognized its ultimate liability and made the payment without action at law or suit in equity."

If the tax had not been a valid tax as against either the association or the corporation, undoubtedly the corporation would have been allowed a recovery.

Wourdeck v. Becker, Collector, 55 F. (2d) 840. Here, the president of a corporation individually paid a valid tax which had been assessed against the corporation. No threat had been made against, and no duress was practiced upon the President to compel him to pay the tax, but the payment was made voluntarily. It was held that he could not recover. Here, again, there was no question about the validity of the tax.

Clift & Goodrich, Inc., v. U. S., 56 F. (2d) 751. In this case a corporation which had succeeded a partnership voluntarily and with full knowledge of the facts, paid a tax which was due from the partnership. The Court said:

> "The payment was no more, therefore, than a gratuitous discharge of obligor's duty, and on what theory it can be recovered, *if that duty existed*, we cannot conceive. The tax was certainly due from the partners and the Treasury had the right to keep the money, unless it was inequitable to do so, because it came from the corporation. An obligee is surely not bound in good conscience to repay such collections.
>
> "Besides, it sufficiently appears that the corporation had recourse over against the partners. . . . Moreover, the whole issue is in any case irrelevant, for it was not material to the Treasury's right to retain the payment that the petitioner should have indemnity." [Italics ours.]

Ohio Locomotive Crane Co. v. Denman, 73 F. (2d) 408. Here, it was held that where one corporation paid a tax *legally due from another*, and there was no duress or mistake, there could be no recovery by the corporation paying the tax. In that case, the Court said with reference to the Amendment of 1924 to the Internal Revenue Act which did away with the requirement of duress and protest:

> "The amendment permits the recovery of taxes illegally assessed or collected, regardless of whether the payment was voluntary or otherwise, but it gives no aid to one who '*pays another's tax actually due*, with full knowledge of what he is doing.'" [Italics ours.]

Hammerstrom v. Toy National Bank, 81 F. (2d) 628. In that case, the Court said:

> "At common law, as a general rule, voluntary payment of taxes cannot be recovered back.

and the Court cited the case of *Union Pacific Railroad Company v. Dodge County Commissioners*, 98 U. S. 541, 543, 25 Law Ed. 196, where the Supreme Court quoted the following language from *Waubaunsee County Commissioners v. Walker*, 8 Kansas 431:

> "Where a party pays an illegal demand, with a full knowledge of all the facts which render such demand illegal, without an immediate and urgent necessity therefor, or unless to release his person or property from detention, or to prevent an immediate seizure of his person or property, such payment must be deemed voluntary and cannot be recovered back. And the fact that the party at the time of making the payment files a written protest does not make the payment involuntary."

The case under consideration, *Hammerstrom v. Toy National Bank*, supra, was one which involved the construction of the laws of the State of Iowa, and is not material to the point now under consideration.

The case of *Union Pacific Railroad Company v. Dodge County Commissioners*, supra, was decided long before the passage of the Act of 1924 which made protest and duress unnecessary.

Of the above cases cited in the opinion by Judge Symes, four were cases where the taxes were admittedly valid and were legally due from someone and were paid willingly by the one who sought to recover. In *Central Aguirre Sugar Co. v. U. S.*, supra, the tax was paid by the one who was ultimately liable for it. In *Wourdeck v. Becker*, supra, the president willingly paid a tax rightfully assessed against a corporation in which he was interested. In *Clift & Goodrich, Inc., v. U. S.*, supra, the corporation willingly paid a valid tax against the partnership which it succeeded. In *Ohio Locomotive Crane Co. v. Denman*, a corporation willingly paid, with full knowledge of the facts, a tax actually and legally due from another.

All of these cases support our contention. The inference from them is that had the tax been illegal and not actually due from anyone, the person paying the tax would have been allowed to recover. In the language of the last case cited:

> "The amendment (1924) permits the recovery of taxes illegally assessed or collected, regardless of whether payment was voluntary, or otherwise, but it gives no aid to one who pays another's tax actually due with full knowledge of what he is doing."

The other case of *Hammerstrom v. Toy National Bank*, supra, and the cases there cited, dealt with situations to which the amendment of 1924 and the present laws eliminating the necessity of protest and duress were inapplicable.

Additional cases cited by Judge Symes are *Union Pacific Railroad Company v. Board of Commissioners*, 98 U. S. 541, 543, 25 Law Ed. 196; *Little v. Bowers*, 134 U. S. 547; *U. S. v. New York and Cuba Mail Steamship Co.*, 200 U. S. 488; *Blanks v. Hazen*, 85 F. (2d) 284; *Ward v. Love County*, 253 U. S. 17; *U. S. v. Edmondston*, 181 U. S. 500; *Chesebrough v. U. S.*, 192 U. S. 253.

Union Pacific Railroad Co. v. Board of Commissioners, 98 U. S. 541, 543, 25 Law Ed. 196. The Court said:

> "Before these payments were made, there had been no demand for the taxes, and no special effort had been put forth by the treasurer for their collection. The Company had personal property in the county which might have been seized; but no attempt had been made to seize it, and no other notice than such as the law implies had been given that payment would be enforced in that way."

The Court said no attempt had been made by the treasurer to serve his warrant. He had not even personally demanded the taxes from the Company, and certainly nothing had been done

from which his intent could be inferred to use the legal process he held to enforce the collection, if the alleged illegality of the claim was made known to him. This case was decided in 1879, when it was necessary to pay under protest and duress, but even in that case the rule was recognized that where the payments were made to release goods held for duties a recovery was justified upon the fact that the payment was made to release property from detention.

Little v. Bowers, 134 U. S. 547, 33 Law Ed. 1016. This case was decided in 1890. It was held that where a party pays an illegal demand with a full knowledge of all of the facts which render such demand illegal, and without an immediate and urgent necessity therefor, and not to release his property or person from detention or to prevent an immediate seizure, such payment is deemed voluntary and cannot be recovered.

U. S. v. New York & Cuba Mail Steamship Co., 200 U. S. 488. In this case, documentary stamps had been purchased at various times without protest. Thereafter, the stamps were used by affixing them to manifests of cargoes on vessels bound for foreign ports. The Court said:

> "The destination of the stamps cannot affect the payment of the tax which they represent. It may be more or less of an inducement to submit to the tax, but who can determine the degree? . . . Besides, whatever element of coercion there was came from the United States, and it was not as immediate in the case of the manifests as in the case of the deed."

and again:

> "There was no claim of the collector of the port from whom the clearances were asked that Defendant-in-Error was acting under the restraint of the law, and yielding only to enable ships to depart to their destinations."

This case was decided in 1906, prior to the amendment to the Internal Revenue Act in 1924.

Ward v. Love County, 253 U. S. 17, 64 Law Ed. 751. This case was decided in 1920. Mr. Justice Van Devanter said:

"Through the pending suits and otherwise, they were objecting and protesting that the taxation of their lands was forbidden by a law of Congress. But, notwithstanding this, the county demanded that the taxes be paid, and by threatening to sell the lands of these claimants, and actually selling other lands similarly situated, made it appear to the claimants that they must choose between paying the taxes and losing their lands. To prevent a sale and to avoid the imposition of a penalty of 18%, they yielded to the county's demand and paid the taxes, protesting and objecting at the time that the same were illegal. The monies thus collected were obtained by coercive means—by compulsion. The county and its officers reasonably could not have regarded it otherwise; much less the Indian claimants . . . *The County places some reliance on Lamborn v. Dickinson County*, 97 *U. S.* 181, 24 *Law Ed.* 926, *and Union Pacific Railroad Co. v. Dodge County*, 98 *U. S.* 541, 25 *Law Ed.* 196; *but those cases are quite distinguishable in their facts and some of the general observations therein to which the county invites attention must be taken as modified by the later cases just cited.*" [Italics ours.]

One of the cases cited in the above case was *A. T. & S. F. Railway Co. v. O'Connor*, 223 U. S. 280, 56 Law Ed. 436. The opinion in that case was by Justice Holmes. In the course of his opinion he said:

"It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy . . . when, as is common, the State has a more summary remedy such as distress, and the party indicates by protest that he is yielding to what he cannot prevent, *Courts sometimes, perhaps, have been a little too slow to recognize the implied duress under which payment is made*, but, even if the State is driven to an action if at the same time the citizen is put at a serious disadvantage in the assertion of

his legal, in this case of his constitutional, rights, by defense in the suit justice may require that he should be at liberty to avoid those disadvantages by paying promptly and bringing suit on his side. He is entitled to assert his supposed right on reasonably equal terms. If he should seek an injunction . . . he would run the same risk as if he waited to be sued." [Italics ours.]

This was made clear in *Lee Moor v. T. & N. O. Railroad*, 75 F. (2d) 386, where it was held that because of the legal remedy the mandamus there sought could not be had.

U. S. v. Edmondston, 181 U. S. 500, 45 Law Ed. 971. This was a case where a purchaser of public lands had paid $2.50 per acre instead of the statutory price of $1.25 per acre. The mistake was not induced by any misrepresentation of the Government or of its officials, and it was held that there was no law by which the purchaser could sue the United States to recover the payment. The case was decided in 1901, and had nothing to do with taxes.

Chesebrough v. U. S., 192 U. S. 253, 48 Law Ed. 432. This case was decided in 1904. In that case, the Plaintiff sought to recover a sum expended in the voluntary purchase of revenue stamps from a collector to be affixed to a conveyance. The Court said that the purchase of the stamps was purely voluntary, and that there was no protest or notice at the time the stamps were purchased.

None of the cases cited by Judge Symes go so far as to hold that the facts in our case were not sufficient to show that the payment by Petitioners was made under duress. None of them hold that, since 1924, a person who has paid a tax which in fact was not legally due from any one, could not recover the tax, even though it was paid voluntarily. Surely, in this Court, it is not necessary to list the innumerable cases which have been decided since 1924 where it has been held that taxes

which were voluntarily paid, and which were thought to be due from the tax payer at the time he made the payment, can, nevertheless, be recovered when it appears that the taxes were not in fact legally assessed or *were not in fact due from the particular taxpayer*, or that the law under which they were assessed was invalid.

We shall, however, briefly refer to a number of cases which to some extent bear upon the questions which are here involved.

Mahoning Investment Co. v. U. S., 3 Fed. Supp. 622. In this case, a tax was assessed against Mahoning Investment Company. It was paid by Rochester and Pitts Coal and Iron Co. It was actually due from the Coal Company. It was held that the Coal Company had by its conduct accepted the method of assessment, and it could not complain. The tax was actually due from it. It was also held that the investment company could not recover because it did not in fact pay the tax, the tax being paid by the Coal Company. This case is helpful to us because it carries a clear intimation that if there had been no estoppel, the Coal Company could have recovered the tax paid by it, although the taxes had been assessed against the Mahoning Investment Company because of the fact that there had been an improper assessment. A Writ of Certiorari was denied in this case, 291 U. S. 675, 54 Sup. Ct. 526.

Wilson and Co. v. U. S., 15 Fed. Supp. 332. Here, the party who paid the tax led the Government to believe it was satisfied until limitations ran against the party who really owed the tax. It was held that estoppel applied, and prevented a recovery. This case is helpful because the intimation was that if no estoppel had existed, the party who paid the tax could have recovered it, although he had knowingly paid the tax lawfully due from another.

Combined Industries, Inc. v. U. S., 15 F. Supp. 349. The Court said:

> "Moreover, one who in due course knowingly and fraudulently pays to the government a tax of another, *when the person for whom such tax was paid owed the amount remitted*, cannot recover the amount paid on the sole ground that he had no income and owed no tax for the year for which such payment was made." [Italics ours.]

There is an intimation here that if no one had owed the tax, the person who made the payment might have been entitled to recover it.

Bunker Hill Country Club v. U. S., 9 F. Supp. 52, 10 F. Supp. 159. (Certiorari denied, 296 U. S. 583, 56 Sup. Ct. 94). Here, the Club collected the tax from its members, and entered its collections in a separate account, from which it remitted the tax to the Collector. It was held in such a case that the Club could not recover as it had not paid the taxes. The Court said:

> "No tax was paid by the club out of its own funds, and it could not recover."

If the ginner in our case and had brought suit for the tax, under the facts of our case the Court might well have held that the ginner could not recover because it had not paid the tax out of its own funds. The checks signed by Stahmann Farms Company were made payable to the Collector of Internal Revenue, and the money went directly from Stahmann Farms Company to the Collector.

Austin National Bank v. Sheppard, Comptroller, 71 S. W. (2d) 242 (Commission of Appeals of Texas, 1934). The Court said:

"A person who pays an illegal tax under duress has a legal claim for its repayment.

. . .

"Duress in the payment of an illegal tax may be either express or implied, and the legal duty to refund is the same in both instances. 26 R. C. L. 457, Section 413. When the statute provides that the tax payer who fails to pay the tax shall forfeit his right to do business in the state and have the Courts closed to him, he is not required to take the risk of having his right to resort to the Courts disputed and his business injured while the invalidity of the tax is being adjudicated. 26 R. C. L. 458.

. . .

"Under Article 1529, R. C. S., this Company was required to file with the Secretary of State a certified copy of its charter. This it did.

. . .

"The fee of $2500.00 paid for filing the amended charter was demanded and paid while the asphalt company's ten-year permit to do business was in full force. It did not legally owe such fee. If the asphalt company had refused to pay such fee, it could not have gotten its charter amendment filed without resorting to the courts, and would have run the risk of having its right to do business in this state and its right to resort to the courts of this state called in question during the litigation. Also, during such period it would have run the risk of having its business greatly hampered and injured. Under such a record, we hold that the asphalt company paid this tax or fee under implied duress, and not as a volunteer. We further hold that under the rules of law above announced, the state is legally liable to repay this tax so illegally demanded and collected."

Dorrance v. Phillips, Collector, 35 F. (2d) 660. In this case, the Temple Company made a consolidated return as the parent company of the Lackawanna Company. It was later

held that the Temple Company was not the parent company of the Lackawanna Company. The Court said:

> "The payment was accordingly a pure mistake on the part of the Temple Company, and cannot be construed as an assumption of the obligations of the Lackawanna Company by the Temple Company or a voluntary payment of its debts to the government. There was no intention upon the part of the Temple Company to assume the tax obligations of the Lackawanna Company if the two were not in fact consolidated in such a manner as to make the Temple Company liable."

Weir v. McGrath, 52 F. (2d) 201. This was a suit brought against the collector. There was no formal protest of any kind but the claim was made that the taxes were illegally demanded. The deputy collector told the president of the company that the taxes must be paid or the officers of the company would expose themselves to criminal prosecution. The Court was of the opinion that this was sufficient to constitute coercion and duress. It is sufficient when the party indicates by protest that he is yielding to what he cannot prevent. This constitutes implied duress, but the Court said that the amendment of 1924 did away with the necessity for protest and duress. The Court said that the statute of 1924 was a recognition of the fact that the recovery against the collector is in substance and effect a recovery from the government, and that the statute is an example of liberality and fairness upon the part of the government showing its unwillingness to retain the benefit of that which was wrongful, whether the technicalities formerly required had been complied with or not. This rule was applied in the suit against the collector.

Lucas v. Kentucky Distilleries and Warehouse Co., 70 F. (2d) 883. Here, a corporation owned a distillery plant, but the plant was conducted in the name of its employee, Wilkin. The tax claimed to be illegal was actually paid by the Com-

pany, and the Company brought suit to recover the tax. The collector, as a part of his defense, claimed that the distillery was a mere volunteer, and that therefore it could not sue to recover the tax which it had paid. The Court held:

> "Wilkin had no interest in the property and to protect itself from distraint the appellee was compelled to pay the tax and its only remedy was to protest and to sue to recover it back."

The Court said:

> "Moreover, Revised Statute 3251 (26 U. S. C. A. Section 249), imposes a joint and several liability for taxes on distilled spirits, upon every proprietor or possessor, and any person in any manner interested in the use of any still, distillery or distilling apparatus, and impresses a lien on any land or buildings wherein such spirits are in existence. To say that the owner of land upon which the statute impresses a lien for taxes may not in discharging the lien question the validity of the tax requires a rather strained interpretation of his status as taxpayer."

In our case the lien was upon the cotton of Petitioners.

Stone v. White, 301 U. S. 532, 57 Sup. Ct. 851; opinion by Mr. Justice Stone, 1937. Here, the Trustees paid a tax which should have been paid by the beneficiary. The Trustees brought suit to recover the tax after the government's claim against the beneficiaries had become barred by the Statute of Limitations. The Court held that since the tax if recovered by the Trustees would go to the beneficiary, and since the beneficiary should have paid a tax of at least equal amount, and since the government's claim against the beneficiary was barred, the Court would look through the whole transaction and in the proper exercise of equitable principles would deny a recovery. The Court said:

"It is said that as the revenue laws treat the Trustee and the beneficiary as distinct tax-paying entities, a court of equity must shut its eyes to the fact that in the realm of reality it was the beneficiary's money which paid the tax, and it is her money which the petitioners ask the government to return.

. . . .

"To avoid this circuity of action, a court of equity takes cognizance of the identity in interest of Trustee and *cestui que trust.*

. . . .

"Equitable conceptions of justice compel the conclusion that the retention of the tax money would not result in any unjust enrichment of the government. All agree that a tax on the income should be paid, and that if the Trustees are permitted to recover, no one will pay it.

. . . .

"Since in equity the one tax payer represents and acts for the other, it is not for either to complain that the government has taken from one with his right hand when it has, because of the same error, given to the other with its left.

. . . .

"Here, the defense is not a counter-demand on petitioners but a denial of their equitable right to undo a payment which, though effected by an erroneous procedure, has resulted in no unjust enrichment to the government, and in no injury to petitioners or their beneficiary."

Jenkins v. Smith, Collector, 21 F. Supp. 433, 437. In this case, the Court held that the element of estoppel by voluntary payment was eliminated by the fact that the former condition precedent to a suit to recover taxes illegally collected or payment under protest or duress, had been abolished. Section 3226, R. S., as amended (26 U. S. C. A., Sec. 1672, 1673). The

Court said that every tax collection was now necessarily considered to be involuntary.

We think that the case of *White v. Hopkins, Collector of Internal Revenue*, 51 F. (2d) 159, Fifth Circuit, July, 1931, is particularly applicable to our case. Taxes were assessed against the Imperial Gasoline Company, of which P. J. White was a stockholder. A warrant of distraint was issued against the company in care of P. J. White. The Collector made demand upon White for payment of the taxes, and threatened to seize property belonging to White and to file suit against him. In fear of execution of said warrant and the institution of said suit, White made payment of the tax out of his own funds. Later, he made application for a refund of the taxes on the ground that he was not the taxpayer against whom the assessment was made, and that he had paid the tax under duress and threat of distraint. The claim was denied and suit was brought by White for the collection of the tax. The Court held that Appellant's case was governed by Revised Statutes, Section 3226. The Court said:

> "We need not discuss whether the compulsion alleged amounted to duress in law or whether the protest was sufficient, as neither duress nor protest was by this section necessary to be shown. He alleges compliance with the condition precedent of appealing to the Commissioner for a refund. The statute applies to the recovery of any tax 'in any manner wrongfully collected' from anyone, and is broad enough to support the cause af action alleged. There is no doubt from the allegations of the petition that the taxes were wrongfully collected."

The Court also said:

> "However, appellee contends that the Imperial Gasoline Co. was the taxpayer, as defined by the act, and that as it neither appealed to the Commissioner nor brought the suit, and that no one but the Imperial Gasoline Company

could appeal to the Commissioner or maintain a suit to recover back the taxes alleged in this case to have been illegally collected. *In other words, Appellee assumes the position that having collected the tax from one who did not owe it when it could not have been legally collected from one who did, no right of redress exists. It cannot be assumed that the United States has adopted any such illogical and inequitable attitude towards her citizens unless the enactments of Congress clearly leave no alternative.*" [Italics ours.]

The Court also said.

"The reasonable construction of the section is that the definition of 'tax payer' does not exclude other definitions in general use, and commonly understood. The dictionaries all define 'tax payer' as 'one who pays a tax'. *Undoubtedly, appellant paid the tax which he sought to recover back, and therefore would be a tax payer under the usual and ordinary definition.* In paying the tax, appellant was not a mere volunteer. A tax imposed upon a corporation is indirectly a tax upon its stockholders. As a stockholder of the Imperial Gasoline Company he had an interest in paying the tax, although slight, to stop the running of the statute of limitations barring a suit to recover it back and to prevent further accumulation of interest. The Collector demanded payment of the tax and enforced collection by threats. Whether these threats could be made effective is immaterial. They were sufficient to operate on the mind of appellant and induce him to make payment against his will. The Commissioner received the money and retained it. He entertained and passed upon the application for a refund, and notified appellant personally of the rejection of his claim without suggesting that he did so because he was not considered the tax payer." [Italics ours.]

We think that the spirit in which a case of this character should be considered is properly described in *George Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 378, 53 Sup. Ct. 620, 622, opinion by Mr. Justice Cardozo, 1933. The Court said:

"In this situation, the government was unjustly enriched at the expense of a taxpayer, when it held on to moneys that had been illegally collected, whether with protest or without. So, at least, the lawmakers believed and gave expression to that belief, not only in the statute but in Congressional reports. Senate Report No. 398, 68th Congress, First Session, pp. 44, 45; House Report No. 179, 68th Congress, First Session, pp. 33, 34. The amendment was designed to right an ancient wrong. It did not draw a distinction between suits against the body politic and suits against a public officer who was to be paid out of the public purse. It put them in a single class, and made them subject to a common rule. A high-minded government renounced an advantage that was felt to be ignoble and set up a new standard of equity and conscience. There was no thought to discriminate between payments made and those to come. A fine sense of honor had brought the statute into being. We are to read it in a kindred spirit. U. S. v. Emery, 237. U. S. 28, 59 Law Ed. 825."

Under some of the authorities which we have cited, if the Santo Tomas Gin Company had, under the facts of this case, brought a suit against the Collector to recover these taxes, because of the unconstitutionality of the Bankhead Act, it is conceivable that the Court might have held that the evidence showed that the tax was paid by Stahmann Farms, that it was not paid by Santo Tomas Gin Company, that it had suffered no injury, and that therefore it was not entitled to recover the tax.

A similar view was taken by the Supreme Court of Illinois in *Standard Oil Co. v. Bollinger,* 180 N. E. 396. In that case, it was held that where the Standard Oil Company had collected the gasoline tax from its customers and had willingly paid the tax to the Tax Collector, it could not recover because it had not paid the tax out of its own funds. The Court held that the Standard Oil Company had suffered no loss, because of the fact that the funds used by it in paying the tax had been collected by it from others.

The case of *Benzoline Motor Fuel Co. v. Bollinger*, 187 N. E. 657, Supreme Court of Illinois, 1933, deserves consideration. The Benzoline Motor Fuel Company brought suit against Bollinger, Director of Finance of the State of Illinois, to recover a gasoline tax paid by it to the State Treasurer, in the amount of $24,268.90. The law under which the tax had been collected had been previously declared to be unconstitutional in another case brought by another taxpayer. The conteption was made that the tax had not been paid by the plaintiff, but by its customers. Plaintiff, however, claimed that it brought the suit not only for its own benefit, but for the benefit of its customers, to whom it had agreed to make a refund if the tax should be collected. It was claimed that the tax had been voluntarily paid but the tax payer claimed payment under duress. The Court said:

> "It is not necessary that the party paying the tax be in physical danger, or that he be actually placed in a position that his property is about to be seized in satisfaction of the tax, or that his back be to the wall, so to speak. Chicago and Eastern Railway Co. v. Miller, 140 N. E. 823. That case clearly held with the well known rule that a person who accepts the benefits of a statute is generally barred thereafter from challenging its validity, provided no question of public policy or public morals is involved; but where it is an involuntary acceptance of the statutory provisions, or where money is paid under the pressure of severe statutory penalties or to avoid disastrous effects to business the payment is involuntary and the money may be recovered. Union Pacific Railway Co. v. Public Service Commission, 248 U. S. 67, 63 Law Ed. 131. Virtual or moral duress is sufficient to prevent a payment made under its influence from being voluntary. Robertson v. Frank Bros. Co., 132 U. S. 17, 33 Law Ed. 236. Where such duress is exerted under circumstances not justified by law it need only be sufficient to influence the apprehensions and conduct of a prudent businessman. If the duress is exerted by one clothed with official authority, or who is exercising a public employment, less evidence of

compulsion or pressure is required. Justice Holmes, speaking for the Court in A. T. & S. F. Railway Co. v. O'Connor, 223 U. S. 280, 56 Law Ed. 436, said: 'It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy. The rule being established that, apart from special circumstances, he cannot interfere by injunction with the State's collection of its revenues, an action at law to recover back what he has paid is the alternative left. Of course, we are speaking of those cases where the State is not put to an action if the citizen refuses to pay. In these latter, he can interpose his objections by way of defense; but when, as is common, the state has a more summary remedy such as distress, and the party indicates by protest that he is yielding to what he cannot prevent, courts sometimes, perhaps, have been a little too slow to recognize the implied duress under which payment is made.' The evidence for the complainant demonstrated that the Director of Finance intended to take, and did take, all necessary steps to collect the tax imposed on motor fuel, regardless of all questions then raised as to the invalidity of the law. The necessary forms were prepared and sent to all distributors in the State by employees in his office. No indication or hint according to the record, was ever given out that the law would not be enforced. We regard as unimportant the argument advanced that the Director of Finance did not make any threats or coerce any one into paying the tax. The statute designated and empowered that official to collect the tax. *The penalties for non-payment of the tax were not formulated as rules and regulations by the Director; they were part of the statute, so that the statute—not the director—was proclaiming the penalties to the motor fuel distributors of the State.* The distributors had every right to indulge in the legal presumption that an officer of the State would live up to his oath of office to perform the duties imposed upon him by law. The evidence disclosed actions on the part of the Director of Finance of such character as to constitute duress well within the rule laid down in the cases above cited." [Italics ours.]

The Court said that from the evidence it was apparent that the complainant was acting for the benefit of its customers, as well

as for itself; that the facts of the case were such that the Court should hold that the Director of Finance is in control of money that in equity and good conscience he has no right to retain, inasmuch as the avenue for the return of the tax money in full to the customers of the complainant without any deductions was straight and broad. The Court said:

> "To contend that this litigation is an endeavor to give to customers indirectly what the law does not give directly is only to say that the interests of the customers are such that this suit cannot prevail, which in this particular instance would mean that the customers would lose. Such a decision would violate equity and good conscience, as by it the State would receive and retain money illegally collected under an unconstitutional law by resting its right on a technicality and not upon the basic principles of justice."

The Court distinguished the case under consideration from the case of *Standard Oil Co. v. Bollinger*, supra. In the *Benzoline Motor Fuel Company* case, the Court pointed out that the Company had collected the tax from its customers with the agreement that it would seek to recover the tax, and in such event would refund it to the customers.

In our case, it is apparent that the Santo Tomas Gin Company is making no claim for a refund, that the time for making such claim has expired, and that if it had recovered the tax, it would be in duty bound to pay it over to Stahmann Farms. The real taxpayers were the Petitioners in this case, and a grave injustice would be done if they were denied a recovery on the highly technical theory urged by Respondent.

Third Point

The Circuit Court of Appeals erred in holding that the Judgment of the District Court which allowed Petitioners a recovery

against Respondent for the taxes paid by them to him should be reversed, because such taxes were not paid under compulsion or duress.

We adopt as the argument under this Point our argument under our First and Second Points, and especially that portion of the argument which is presented to show that under Section 20 of the Bankhead Act and 26 U. S. C. A., Sections 1672 and 1673, it is no longer necessary that taxes should be paid under protest and duress.

Fourth Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioners should be repaid to them by the Respondent, because the Bankhead Act under which they were assessed was in violation of the Tenth Amendment to the Constitution of the United States.

The Tenth Amendment to the Constitution reads:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

We think that this Court is sufficiently familiar with the Bankhead Act to make it unnecessary for us at this time to fully discuss its provisions. The Bankhead Act was clearly an attempt upon the part of the Congress to regulate the amount of cotton which an individual farmer might raise upon his farm. The so-called tax was a penalty designed to prohibit a farmer from exceeding the quota allowed him under the Act. We think the following authorities sustain our contention: *U. S. v. Butler* (A. A. A. case), 297 U. S. 1-79, 56 Sup. Ct. 312;

Bailey v. Drexel Furniture Co. (Child Labor case), 259 U. S. 20, 42 Sup. Ct. 449; *U. S. v. Lee Moor*, 93 F. (2d) 422 (Affirmed Judgment for return of Bankhead taxes); *Thompson v. Deal*, 92 F. (2d) 478 (This case involved a recovery of sums paid by cotton growers for exemption certificates under the Bankhead Act); *Woner v. Lewis*, 13 F. Supp. 45 (In this case it was held that a cotton producer had an adequate remedy at law in that he could pay the tax and sue for a refund); *Robenson v. Taylor*, 90 F. (2d) 812, and *Glenn v. Smith*, 91 F. (2d) 447 (Both affirmed Judgment for refund of tobacco taxes).

As said by the United States Circuit Court of Appeals of the Fifth Circuit in *U. S. v. Moor*, supra:

> "Immediately after the Agricultural Adjustment Act was held unconstitutional, the Congress repealed the Bankhead Act, as of February 10, 1936, 49 Stat. 1106; and by the Act of March 2, 1936, 49 Stat. 1155, it was declared that all uncollected taxes, penalties and interest and liens therefor arising under it were cancelled and released. Congress thereby indicated that the Bankhead Act was so intimately related to the Agricultural Adjustment Act that the two should go down together."

In *J. Wood Thompson v. Deal, Manager National Surplus Cotton Exemption Certificate Pool*, supra, decided June 28, 1937, certain cotton producers brought suit against Ernest L. Deal, individually and as Manager of the National Surplus Cotton Tax Exemption Certificate Pool and others. The Plaintiffs alleged that they were producers of cotton, and that in order to market their cotton they had purchased tax exemption certificates from the National Surplus Cotton Tax Exemption Certificate Pool; that the monies which they had paid into the Pool were still held by its Manager, who was about to disburse such funds to the farmers who had turned their surplus exemption certificates over to the Pool for sale. They alleged that the Bankhead Act was unconstitutional and void, that they had contributed their money to the Pool under duress, that in fact

the tax exemption certificates were valueless, that the farmers who had turned over their certificates to the Pool had turned over such worthless certificates and had therefore parted with nothing, and that the money which had been collected by the Pool from the Plaintiffs and others similarly situated had been collected by duress, and that in equity such money should be returned to Plaintiffs, who had been compelled to contribute such funds by the duress exerted by the Bankhead Act. The Court in this decision held that the plaintiffs were right, and that the funds which they had contributed to the Pool should be restored to them. The Court said with reference to the validity of the Bankhead Act:

> "The Bankhead Act was repealed February 10, 1936, following the decision in United States v. Butler, 297 U. S. 1, and we take it as settled for the purposes of this discussion—and indeed it was not otherwise contended in the argument and in the briefs by government counsel, that the decision of the Butler case invalidating the Agricultural Adjustment Act is controlling, and that the Act now under consideration and regulations made pursuant to it are, therefore, invalid."

The Court next passed to a consideration of the contention made by the Defendants to the effect that the Plaintiffs had voluntarily purchased exemption certificates and were therefore not entitled to recover the sums paid by them. The Court said:

> "The argument on behalf of the government is that appellants were not coerced into doing business with Manager Deal. Counsel say that officer could not compel appellants to purchase certificates from the Pool, that Appellant could just as well have complied with the tax provisions of the Act, and in that case would have had recourse against the United States for the recovery of the taxes, if the exaction were shown to be invalid."

We see that in this case the government was contending that the producers of cotton—not ginners—could pay the tax and

then recover the sums so paid if the Bankhead Act were invalid, a position directly contrary to the position taken by the government in this case. The Court then goes on to say:

> "From these facts they draw the conclusion that appellant's purchase of pool certificates was due to their own voluntary desire to avoid payment of the tax and thus to save money. This, they say, is not duress. . . . But we think this contention cannot be sustained. The government had no right to limit the production of cotton or to use the taxing power exclusively to accomplish that end. Having accepted the allotment and by good husbandry and diligence, or by the fertility of his land, grown and harvested a crop in excess of the allotment, he was faced, in the alternative of paying to the government in the form of a tax, half the value above the allotment or purchasing certificates at a sacrifice of two-fifths. Failing one or the other of these courses, he could not sell his cotton without subjecting himself to the penalty of fine and imprisonment. Whatever may have been the old rule as to the characteristics of duress and coercion, a more liberal view prevails—and ought to prevail today,—a change of viewpoint which has arisen as government has extended its control over the domestic concerns of the citizen. The Supreme Court of Wisconsin (Minneapolis, St. Paul and S. S. M. Ry. Co. v. Railroad Commission, 197 N. W. 352) has expressed this better view as follows: 'The old rule that there could be duress only where there was a threat of loss of life, limb or liberty, has so changed that duress may sometimes be implied when a payment is made or an act performed to prevent great property loss or heavy penalties, when there seems no adequate remedy except to submit to an unjust or illegal demand, and then seek redress in the courts.' We are not unmindful of the rule that ordinarily when money has been voluntarily paid with full knowledge of the facts it cannot be recovered on the ground that payment was made under a misapprehension of the legal rights and obligations of the person paying. But we think this rule has no present relevancy for, as Mr. Justice Clifford said in U. S. v. Ellsworth, 101 U. S. 170,—in a very clear case of what many courts would

have called a voluntary payment made under misapprehension of legal rights—'Call it mistake of law or mistake of fact, the principles of equity forbid the United States to withhold the same from the rightful owner'. We might prolong this discussion indefinitely, for the books are full of cases on the subject, but this would avail us nothing since, as we think, the question we have asked is answered in principle by the Supreme Court in Union Pacific R. Co. v. Public Service Commission, 248 U. S. 67."

The Court then quotes from the above decision in the Supreme Court, and following such quotation says:

"We think it is manifest from what is said in the case just cited that the question of whether a payment is voluntary or involuntary has been in a large measure relieved of the artificial tests formerly applied by some courts. Here, the payment was made under such an urgent necessity as to imply that it was made under compulsion; and this brings us to the final question in the case, namely, whether in order to recover appellants must show that the compulsion or coercion came from the parties who had deposited certificates in the pool."

The Court then said:

"It would be manifestly incorrect to say that the Act did not compel the purchase of certificates, for both purchase and sale were immediately necessary to all concerned,—necessary to the purchasing farmer in order that he might realize more or suffer less on account of his industry, necessary to the government in order that its plan of benefits and gratuities might be consummated, and necessary to the depositor in order that he might obtain the benefits. In the situation we have here, Deal was at once the representative of the coercive force by which payment was compelled, and the representative of those who were the intended beneficiaries of the payments . . . . It is an ancient maxim of the law that what is forbidden to a person to do himself he cannot do by the agency of another."

Certainly, if one who has purchased exemption certificates may recover his money from the one to whom he paid it for the certificates, a farmer who has paid the full tax to the Collector of Internal Revenue in order to dispose of his cotton may pursue the remedy held open to him by the very terms of the Act and presented by the government in equitable suits prosecuted by farmers as an adequate remedy preventing the exercise of equity jurisdiction.

Fifth Point

The Circuit Court of Appeals erred in not holding that the taxes paid by Petitioners should be repaid to them by Respondent, because the Bankhead Act under which they were assessed was in violation of the Fifth Amendment to the Constitution.

The Fifth Amendment provides that no person shall "be deprived of life, limb or property without due process of law." The act, considered as a revenue measure, is arbitrary and capricious, and takes property without due process of law. An examination of the various quota and exemption provisions of the Bankhead Act will demonstrate its invalidity under the principles announced in the following opinions: *Railroad Retirement Board v. Alton Railroad Co.*, 295 U. S. 330; *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555; *Stewart Dry Goods Co. v. Lewis*, 294 U. S. 550; *Nichols v. Coolidge*, 274 U. S. 531, 542; *Blodgett v. Holden, Collector*, 275 U. S. 142.

Sixth Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioner should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 9, cl. 4 of the Constitution, providing: "No Capitation, or other direct, tax

shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken."

Seventh Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 2, cl. 3 of the Constitution, which provides: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers."

Authorities

Brushaber v. Union Pacific Railroad Co., 240 U. S. 1;
Pollock v. Farmers Loan & Trust Co., 157 U. S. 429;
Knowlton v. Moore, 178 U. S. 41;
Stewart Dry Goods Co. v. Lewis, 294 U. S. 550;
Dawson v. Kentucky Distilleries & Warehouse Co., 255 U. S. 288.

Eighth Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 8, cl. 1, which provides: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."

Authorities

Knowlton v. Moore, 178 U. S. 41;
Patton v. Brady, 184 U. S. 608;
Flint v. Stone-Tracy Co., 220 U. S. 107;
Billings v. U. S., 232 U. S. 261;
Brushaber v. Union Pacific Railroad Co., 240 U. S. 1;
LaBelle Iron Works v. U. S., 256 U. S. 377;
Bromley v. McCaughn, 280 U. S. 124.

Ninth Point

The Circuit Court of Appeals erred in refusing to hold that the taxes paid by Petitioners should be repaid to them by Respondent because the Bankhead Act under which they were assessed was in violation of Article 1, Section 1 of the Constitution, which provides: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives".

A reading of the Bankhead Act will demonstrate that in many important fields the Congress has delegated powers to the President, the Secretary of Agriculture, and to cotton farmers.

Authorities

Panama Refining Co. v. Ryan, 293 U. S. 388;
Schechter Poultry Corp. v. U. S., 295 U. S. 495.

CONCLUSION

We respectfully request that a Writ of Certiorari issue to the United States Circuit Court of Appeals for the Tenth Circuit in order that the errors committed by that Court may be considered and corrected by this Court.

Respectfully submitted,

THORNTON HARDIE,
El Paso, Texas,
Attorney for Petitioners.

W. C. WHATLEY,
Las Cruces, New Mexico,

R. NEILL WALSHE,
El Paso, Texas,

Of Counsel.

APPENDIX

(Sec. 3) (a) When the Secretary of Agriculture finds for the crop year 1935-1936 . . . if the provisions of this Act are effective for such crop year, that two-thirds of the persons who have the legal or equitable right as owner, tenant, sharecropper or otherwise, to produce cotton on any cotton farm or part thereof in the United States for such crop year favor a levy of a tax on the ginning of cotton in excess of an allotment made to meet the probable market requirements and determines that such a tax is required to carry out the policy declared in Section 1, the Secretary shall ascertain from an investigation of the available supply of cotton and the probable market requirements the quantity of cotton that should be allotted, in accordance with the policy declared in Section 1, for marketing in the channels of interstate and foreign commerce, from production of cotton during the succeeding cotton crop year, exempt from the payment of taxes thereon.

(Sec. 3.) (c) For the crop year 1934-1935 ten million bales is hereby fixed as a maximum amount of cotton of the crop harvested in the crop year 1934-1935, that may be marketed exempt from payment of the tax herein levied . . . .

Sec. 4.) (a) There is hereby levied and assessed on the ginning of cotton hereafter harvested during the crop year with respect to which this Act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound . . . .

(Sec. 4.) (c) Every person ginning any cotton subject to tax under this Act (whether as agent of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the Collector for the District in which the

ginning is done, or to such other person as such Collector may direct . . . . The tax shall, without assessment by the Commissioner or notice from the Collector, be due and payable to the Collector at the time so fixed for filing the return.

(Sec. 4.) (e) No tax shall be imposed under this Act with respect to —

(2) An amount of cotton harvested in any crop year from each farm equal to its allotment.

(3) Cotton harvested prior to the crop year 1934-1935.

(Sec. 4.) (f) The tax shall not be collected upon the ginning of cotton which is to be stored by the producer thereof either on the farm or at such place as may be permitted by regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury. In such cases, the payment of the tax shall be postponed, but shall be paid at the time when bale tags are secured for such cotton. Bale tags may be secured for any of such cotton at any time after ginning, (1) upon the payment to such person as the Commissioner may direct, of the amount of tax which would have been payable at the time of ginning, or (2) upon the surrender of certificates of exemption covering an amount of cotton not less than the amount of such cotton. Until bale tags are secured for such cotton, such cotton shall be subject to a lien in favor of the United States for the amount of the tax payable with respect to the ginning of such cotton. The right to postponement of the payment of the tax under this sub-section shall be established in accordance with such regulations as the Secretary of Agriculture and the Secretary of the Treasury may prescribe. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe regulations providing for stamping the containers of such cotton so as to indicate the time of ginning and the amount of tax payable with respect thereto.

(Sec. 4.) (g) The right to exemption under Paragraph (2) of sub-section (e) shall be evidenced by a cetificate of exemption issued as herein provided, which certificate of exemption shall be conclusive proof of the right to such exemption.

(Sec. 5.) (a) When an allotment is made, in order to prevent unfair competition and unfair trade practices in marketing cotton in the channels of interstate and foreign commerce, the Secretary of Agriculture shall apportion to the several cotton producing states the number of bales the marketing of which may be exempt from the tax herein levied . . . .

(Sec. 5.) (b) The amount allotted to each state (less the amounts allotted under Section 8) shall be apportioned by the Secretary of Agriculture to the several counties in such State on a basis and ratio, applied to such counties, similar to that set forth in sub-section (a), except that . . . .

(Sec. 6.) A producer of cotton desiring to secure a tax exemption certificate may file an application therefor with the agent designated by the Secretary of Agriculture, accompanied by a statement under oath showing the approximate quantity of cotton produced on the lands presently owned, rented, sharecropped, or controlled by the applicant during a representative period fixed by the Secretary of Agriculture . . . No certificate of exemption shall be issued and no allotment shall be made to any producer unless he agrees to comply with such conditions and limitations on the production of agricultural commodities by him as the Secretary of Agriculture may, from time to time, prescribe, to assure the co-operation of such producer in the reduction programs of the Agricultural Adjustment Administration, and to prevent expansion on lands leased by the Government of competitive production by such producer of agricultural commodities other than cotton.

(Sec. 7.) (a) The amount of cotton allotted to any county

pursuant to section 5 (b) shall be apportioned by the Secretary of Agriculture to farms on which cotton has been grown within such county . . . .

(Sec. 7.) (a) (3) . . . The Secretary of Agriculture, in determinating the manner of allotment to individual farmers, shall provide that the farmers who have voluntarily reduced their cotton acreage shall not be penalized in favor of those farmers who have not done so.

(Sec. 8.) Whenever an allotment is made pursuant to section 3, not to exceed 10 per centum of the number of bales allotted to each state shall be deducted from the number of bales allotted to such state, and allotment in such State —

(a) To producers of cotton on farms where, for the preceding three years less than one-third of the cultivated land on such farms has been planted to cotton;

(b) To producers of cotton on farms not previously used in cotton production;

(c) To producers of cotton on farms where, for the preceding five years, the normal cotton production has been reduced by reason of drought, storm, flood, insect pests, or other uncontrollable natural cause; and

(d) To producers of cotton on farms where, for the preceding three years, acreage theretofore planted to cotton has been voluntarily reduced so that the amount of reduction in cotton production on such farm is greater than the amount which the Secretary finds would have been an equitable reduction applicable to such farms in carrying out a reasonable reduction program. The allotments provided for in this section shall be in addition to the amounts apportioned to the counties under section 5 (b).

(Sec. 10.) (a) Upon the payment of the tax on any cotton or the surrender of exemption certificates covering cotton, the collector receiving such payment or certificates shall deliver to the persons so paying or surrendering an appropriate number of bale tags, which shall be affixed to said cotton.

(Sec. 12.) The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying bale tags, and the method of accounting for receipts from the sale of and for the use of such bale tags, and (b) such other regulations as he shall deem necessary for the enforcement of the taxing provisions of this Act.

(Sec. 14.) (b) Except as may be permitted by regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, with due regard for the protection of the Revenue, no person shall: (1) Transport, except for storing or warehousing, under the provisions of Section 4 (f) (storing or warehousing) beyond the boundaries of the county where produced, any lint cotton to which a bale tag issued under this Act is not attached; or (2) sell, purchase, or open any bale of lint cotton to which a bale tag issued under this Act is not attached.

(Sec. 14.) (c) No seed cotton harvested during the crop year with respect to which the tax is in effect shall be exported from the United States or any possession thereof to which this Act applies, to any possession of the United States to which this Act does not apply or to any foreign country.

(Sec. 15.) (b) The Secretary of Agriculture may make regulations protecting the interests of share-croppers and tenants in the making of allotments and the issuance of tax exemption certificates under this Act.

(Sec. 17.) (b) Appropriations for administrative expenses under this Act are authorized to be made available to enable the Secretary of Agriculture to pay any person, who, in connection with the operation of any cotton gin, incurred additional expenses in connection with the administration of this Act with respect to cotton ginned during the crop year 1935-1936, or any subsequent crop year, in which this Act is in effect, and who applies to the Secretary therefor, compensation in the amount of such additional expenses, but not in excess of the rate of 25 cents per bale of such cotton ginned by such person, provided proof satisfactory to the Secretary of Agriculture is furnished that the additional expenses for which such person makes application have not been passed on in any manner whatsoever (Section 40 of the Act of August 24, 1935).

(Sec. 20.) (a) No refund of any tax, penalty, or sum of money paid shall be allowed under this Act unless claim therefor is presented within six months after the date of payment of such tax, penalty, or sum.

(Sec. 21.) If any provision of this Act, or the application thereof, to any person or circumstance is held invalid, the remainder of this Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

FILE COPY

No. 12

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1938

D. F. STAHMANN, ANNA M. STAHMANN, and JOYCE F. STAHMANN, doing business as Stahmann Farms Company,

Petitioners,

VERSUS

S. P. VIDAL, Collector of Internal Revenue of the District of New Mexico,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT OF APPEALS FOR THE TENTH CIRCUIT

PETITIONERS' BRIEF

THORNTON HARDIE,
Of El Paso, Texas,
Attorney for Petitioners.

W. C. WHATLEY,
Of Las Cruces, New Mexico,
R. NEILL WALSHE,
Of El Paso, Texas,
Of Counsel.

ROBERT H. JACKSON,
Solicitor General of the United States,
Washington, D. C.

F. E. YOUNGMAN,
Special Assistant to the Attorney General,
Washington, D. C.
Attorneys for Respondent.

SUBJECT INDEX

INDEX OF AUTHORITIES

No. 12

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1938

D. F. STAHMANN, ANNA M. STAHMANN, and JOYCE F. STAHMANN, doing business as Stahmann Farms Company,

Petitioners,

VERSUS

S. P. VIDAL, Collector of Internal Revenue of the District of New Mexico,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT OF APPEALS FOR THE TENTH CIRCUIT

PETITIONERS' BRIEF

I.

OPINIONS BELOW

The Findings and conclusions and Judgment of the District Court of the United States for the District of New Mexico (Colin Neblett, Judge) appear on pages 14

to 16 of the Record. The opinion of the Circuit Court of Appeals for the Tenth Circuit (Symes, District Judge) is reported in 93 F. (2d) 902; and appears on pages 31 to 35 of the Record.

II.

Writ of Certiorari was granted by this Court on April 25, 1938 (R. 32), 58 Sup. Ct. Rep. 943, ____ U. S. ____.

In granting the Writ, the Court made the following notation:

> "The petition for writ of certiorari is granted limited to the question of whether the petitioners were the proper parties to maintain the suit."

III.

STATEMENT OF THE CASE

A. FACTS INVOLVED

1. Pleadings

(a) Plaintiff's Original Petition, filed May 5, 1936 (R. 1-3)

1. Plaintiffs, during the crop year 1934-1935, were engaged in the growing of cotton in Dona Ana County, New Mexico, cultivating a plantation having an acreage of more than 2000 acres, and which they had been cultivating for many years.

2. During the year 1934, they produced a quantity of cotton in excess of the quota permitted them under the Bankhead Cotton Control Act, and in order to sell or to market the cotton which they had raised in excess of said quota, they were compelled to obtain bale tags

for said cotton, for which they were compelled to pay, under protest, the sum of $13,064.52, payment being made by Plaintiffs by their checks payable to the order of S. P. Vidal, Collector of Internal Revenue of the United States for the District of New Mexico, who collected the amounts specified in said checks. The tax was exacted from Plaintiffs by the Defendant pursuant to the provisions of the Bankhead Act. The assessment and collection of said tax by the Defendant was illegal and wrongful, in that said Act was void and unconstitutional, and the Act furnished no authority to the Defendant to demand, exact, receive and retain said tax.

3. On March 6, 1935, Plaintiffs duly filed with the Defendant claim for refund in accordance with the provisions of law and the regulations of the Secretary of the Interior, and said claim was forwarded to the Commissioner of Internal Revenue and was by him denied and rejected, and due notice thereof given to the Plaintiffs, and Plaintiffs pray Judgment for the recovery of said tax, with interest.

The pleading was verified by D. F. Stahmann, one of the Plaintiffs.

(b) Defendant's Amended Answer, filed October 15, 1936 (R. 5-6)

1. Defendant admits the allegations of the first paragraph of Plaintiffs' Complaint.

2. Defendant admits that during the crop year 1934-1935 Plaintiffs produced a quantity of cotton in excess of the quota allowed them under the Bankhead Act, and that the sum of $13,064.52 was paid to Defendant on the dates and in the amounts alleged in Paragraph 2 of the

Complaint. Defendant says that he denies that the amounts were paid by the Plaintiffs under protest or otherwise, and alleges that if such amounts were paid to him by the Plaintiffs they were paid to discharge the liability imposed upon a person or persons other than the Plaintiffs by the Act of April 21, 1934. Defendant denies that the Plaintiffs were compelled to pay such amounts to him, and that he illegally assessed or collected any sums from the Plaintiffs, or from any person whose liability under the Act of April 21, 1934, was discharged by the Plaintiffs.

3. The Defendant admits that on March 6, 1935, Plaintiff duly filed a claim on the forms provided by the Treasury Department for the refund of said sum of $13,064.52; that the Commissioner of Internal Revenue rejected said claim on August 22, 1935. The allegations not admitted were denied.

The answer was verified by the Defendant.

2. Evidence

(R. 7-11)

The following facts were established by admissions and stipulations. The facts admitted by the Defendant's answer were agreed to. It was further agreed that the facts upon which the Court might pass as pertinent to the issues in this case were as follows:

1. During the crop year 1934-1935, Plaintiffs produced a quantity of cotton in excess of the quota allowed them under the Bankhead Act.

2. Plaintiffs delivered their cotton to the Santo Tomas

Gin Company, of Mesquite, New Mexico, for the purpose of being ginned.

3. Said Company ginned Plaintiffs' cotton, and thereafter filed monthly returns with the Collector of Internal Revenue for New Mexico for the months of October, November and December, showing a total tax due in the amount of $13,064.52.

4. Upon the returns referred to, assessments were made against the Santo Tomas Gin Company, as follows:

"Cotton ginning:

Oct.-Nov. 1934 P.T. 1934 Dec. P. 8000 L. 7 $11,193.99
12/19/34 11,193.99 PD.

Dec. 1934 P.T. 1935 Jan. P. 8001 L. 0 $ 1,870.53
1/25/35 1,870.53 PD."

The above tax was paid by checks drawn by Stahmann Farms, payable to the Collector of Internal Revenue, as follows:

Check No. 1571 for $9131.44, dated November 27, 1934, drawn on the State National Bank, of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1584, for $1550.23, dated November 28, 1934, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934;

Check No. 1728, for $512.32, dated December 13, 1934, drawn on the State National Bank of El Paso, Texas,

cleared through Clearing House, El Paso Branch, Federal Reserve Bank, December 21, 1934; and

Check No. 135, dated January 19, 1935, for $1870.53, drawn on the State National Bank of El Paso, Texas, cleared through Clearing House, El Paso Branch, Federal Reserve Bank, January 26, 1935.

5. Santo Tomas Gin Company declined to deliver the ginned cotton to Plaintiffs until the above assessments were paid and Plaintiffs paid the said tax by checks drawn by Stahmann Farms payable to the Collector of Internal Revenue in the amounts hereinbefore listed.

6. The Collector of Internal Revenue applied said payments against the assessments which appeared on his books under the name of Santo Tomas Gin Company, Mesquite, New Mexico.

7. On March 6, 1935, Plaintiff filed a claim for refund for $13,064.52, based upon the alleged unconstitutionality of the Bankhead Act.

8. The Commissioner of Internal Revenue rejected the claim on August 22, 1935.

The original stipulation purported to state the issues of law (R. 9), but this stipulation was withdrawn (R. 10).

B. QUESTION PRESENTED

When the producer of cotton has been required to pay the Bankhead tax to the Collector of Internal Revenue of the United States for the District of New Mexico in order to obtain any beneficial use of his cotton, can he thereafter recover from the Collector the concededly illegal tax?

C. STATUTES INVOLVED

Act of April 21, 1934, c. 157, 48 Stat. 598, 7 U. S. C. A., Section 701, et seq., generally known as the Bankhead Cotton Control Act. The Court is familiar with the general terms and purpose of the Act. The particular provisions of the Act applicable to the question involved here are set forth below.

(Sec. 3) (a) When the Secretary of Agriculture finds for the crop year 1935-1936 . . . if the provisions of this Act are effective for such crop year, that two-thirds of the persons who have the legal or equitable right as owner, tenant, sharecropper or otherwise, to produce cotton on any cotton farm or part thereof in the United States for such crop year favor a levy of a tax on the ginning of cotton in excess of an allotment made to meet the probable market requirements and determines that such a tax is required to carry out the policy declared in Section 1, the Secretary shall ascertain from an investigation of the available supply of cotton and the probable market requirements the quantity of cotton that should be allotted, in accordance with the policy declared in Section 1, for marketing in the channels of interstate and foreign commerce, from production of cotton during the succeeding cotton crop year, exempt from the payment of taxes thereon.

(Sec. 3) (c) For the crop year 1934-1935 ten million bales is hereby fixed as a maximum amount of cotton of the crop harvested in the crop year 1934-1935, that may be marketed exempt from payment of the tax herein levied . . .

(Sec. 4 (a) There is hereby levied and assessed on

the ginning of cotton hereafter harvested during the crop year with respect to which this Act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound . . .

(Sec. 4) (c) Every person ginning any cotton subject to tax under this Act (whether as agent of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the Collector for the District in which the ginning is done, or to such other person as such Collector may direct . . . The tax shall, without assessment by the Commissioner or notice from the Collector, be due and payable to the Collector at the time so fixed for filing the return.

(Sec. 4) (e) No tax shall be imposed under this Act with respect to—

(2) An amount of cotton harvested in any crop year from each farm equal to its allotment.

(3) Cotton harvested prior to the crop year 1934-1935.

(Sec. 4) (f) The tax shall not be collected upon the ginning of cotton which is to be stored by the producer thereof either on the farm or at such place as may be permitted by regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury. In such cases, the payment of the tax shall be postponed, but shall be paid at the time when bale tags are secured for

such cotton. Bale tags may be secured for any of such cotton at any time after ginning, (1) upon the payment to such person as the Commissioner may direct, of the amount of tax which would have been payable at the time of ginning, or (2) upon the surrender of certificates of exemption covering an amount of cotton not less than the amount of such cotton. Until bale tags are secured for such cotton, such cotton shall be subject to a lien in favor of the United States for the amount of the tax payable with respect to the ginning of such cotton. The right to postponement of the payment of the tax under this sub-section shall be established in accordance with such regulations as the Secretary of Agriculture and the Secretary of the Treasury may prescribe. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe regulations providing for stamping the containers of such cotton so as to indicate the time of ginning and the amount of tax payable with respect thereto.

(Sec. 4) (g) The right to exemption under Paragraph (2) of sub-section (e) shall be evidenced by a certificate of exemption issued as herein provided, which certificate of exemption shall be conclusive proof of the right to such exemption.

(Sec. 5) (a) When an allotment is made, in order to prevent unfair competition and unfair trade practices in marketing cotton in the channels of interstate and foreign commerce, the Secretary of Agriculture shall apportion to the several cotton producing states the number of bales the marketing of which may be exmpt from the tax herein levied . . .

(Sec. 5) (b) The amount allotted to each state (less the amounts allotted under Section 8) shall be apportioned by the Secretary of Agriculture to the several counties in such State on a basis and ratio, applied to such counties, similar to that set forth in sub-section (a), except that . . .

(Sec. 6) A producer of cotton desiring to secure a tax exemption certificate may file an application therefor with the agent designated by the Secretary of Agriculture, accompanied by a statement under oath showing the approximate quantity of cotton produced on the lands presently owned, rented, sharecropped, or controlled by the applicant during a representative period fixed by the Secretary of Agriculture . . . No certificate of exemption shall be issued and no allotment shall be made to any producer unless he agrees to comply with such conditions and limitations on the production of agricultural commodities by him as the Secretary of Agriculture may, from time to time, prescribe, to assure the co-operation of such producer in the reduction programs of the Agricultural Adjustment Administration, and to prevent expansion on lands leased by the Government of competitive production by such producer of agricultural commodities other than cotton.

(Sec. 7) (a) The amount of cotton allotted to any county pursuant to section 5 (b) shall be apportioned by the Secretary of Agriculture to farms on which cotton has been grown within such county.

(Sec. 7) (a) (3) . . . The Secretary of Agriculture, in determining the manner of allotment to individual farmers, shall provide that the farmers who have volun-

tarily reduced their cotton acreage shall not be penalized in favor of those farmers who have not done so.

(Sec. 8) Whenever an allotment is made pursuant to section 3, not to exceeed 10 per centum of the number of bales allotted to each state shall be deducted from the number of bales allotted to such state, and allotted in such State—

(a) To producers of cotton on farms where, for the preceding three years less than one-third of the cultivated land on such farms has been planted to cotton;

(b) To producers of cotton on farms not previously used in cotton production;

(c) To producers of cotton on farms where, for the preceding five years, the normal cotton production has been reduced by reason of drought, storm, flood, insect pests, or other uncontrollable natural cause; and

(d) To producers of cotton on farms where, for the preceding three years, acreage theretofore planted to cotton has been voluntarily reduced so that the amount of reduction in cotton production on such farm is greater than the amount which the Secretary finds would have been an equitable reduction applicable to such farms in carrying out a reasonable reduction program. The allotments provided for in this section shall be in addition to the amounts apportioned to the counties under section 5 (b).

(Sec. 10) (a) Upon the payment of the tax on any cotton or the surrender of exemption certificates covering cotton, the collector receiving such payment or certifi-

cates shall deliver to the persons so paying or surrendering an appropriate number of bale tags, which shall be affixed to said cotton.

(Sec. 12) The Commissioner, with the approval of the Secretary of the Tueasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing and destroying bale tags, and the method of accounting for receipts from the sale of and for the use of such bale tags, and (b) such other regulations as he shall deem necessary for the enforcement of the taxing provisions of this Act.

(Sec. 14) (b) Except as may be permitted by regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, with due regard for the protection of the Revenue, no person shall: (1) Transport, except for storing or warehousing, under the provisions of Section 4 (f) (storing or warehousing) beyond the boundaries of the county where produced, any lint cotton to which a bale tag issued under this act is not attached; or (2) sell, purchase, or open any bale of lint cotton to which a bale tag issued under this Act is not attached.

(Sec. 14) (c) No seed cotton harvested during the crop year with respect to which the tax is in effect shall be exported from the United States or any possession thereof to which this Act applies, to any possession of the United States to which this Act does not apply or to any foreign country.

(Sec. 15) (b) The Scretary of Agriculture may make regulations protecting the interests of share-croppers and tenants in the making of allotments and the issuance of tax exemption certificates under this Act.

(Sec. 17) (b) Appropriations for administrative expenses under this Act are authorized to be made available to enable the Secretary of Agriculture to pay any person, who, in connection with the operation of any cotton gin, incurred additional expenses in connection with the administration of this Act with respect to cotton ginned during the crop year 1935-1936, or any subsequent crop year, in which this Act is in effect, and who applies to the Secretary therefor, compensation in the amount of such additional expenses, but not in excess of the rate of 25 cents per bale of such cotton ginned by such person, provided proof satisfactory to the Secretary of Agriculture is furnished that the additional expenses for which such person makes application have not been passed on in any manner whatsoever (Section 40 of the Act of August 24, 1935).

(Sec. 20) (a) No refund of any tax, penalty, or sum of money paid shall be allowed under this Act unless claim therfor is presented within six months after the date of payment of such tax, penalty, or sum.

(Sec. 21) If any provision of this Act, or the application thereof, to any person or circumstance is held invalid, the remainder of this Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

Act of February 10, 1936, 49 Stat. 1106, repealed the Bankhead Act. 28 U. S. C. A., Section 41, subdivision 5; suits against the Collector to recover taxes wrongfully collected may be prosecuted in the Federal Court.

26 U. S. C. A., Sections 1670 to 1675. Statutes regulating claims and refunds on taxes illegally collected.

D. HISTORY OF THE CASE IN AND RULINGS OF THE LOWER COURT

Plaintiffs' Petition sought recovery of $13,064.52 paid by them to the Defendant as taxes under the Bankhead Act on cotton produced by Plaintiffs in 1934. It was alleged that the Act was unconstitutional, and that Plaintiffs have been compelled to pay the tax in order to have any beneficial use of their cotton (R.1-3).

Defendant alleged that the tax was assessed against the ginner, and not against Plaintiffs, who were the producers of the cotton, and that the payment having been voluntarily made could not be recovered (R. 5-6).

Upon the conclusion of the case, District Judge Colin Neblett held that the Bankhead Act was unconstitutional, and rendered Judgment for Plaintiffs for $13,064.52 and interest (R. 16). On appeal, the United States Circuit Court of Appeals for the Tenth Circuit (D. J. Symes) reversed the lower court, and held that the Plaintiffs having voluntarily paid a tax which was not their obligation but that of the ginner, could not recover (R. 26-30).

IV. SPECIFICATIONS OF ERROR

The Circuit Court of Appeals erred:—

1. In holding that Plaintiffs, who paid the Bankhead tax incident to cotton owned by them, and who had duly filed a claim for refund which had been denied, were volunteers, and not entitled to recover from Defendant the taxes actually paid by them to the Defendant, even though the Bankhead Act is unconstitutional.

V. SUMMARY OF ARGUMENT

It is the contention of Petitioners:—

1. The Bankhead Cotton Control Act is unconstitutional and void. *U. S. v. Lee Moor*, 93 F. (2d) 422, Petition for Writ of Certiorari denied by Supreme Court, April 11, 1938.

2. Since under the provisions of the Bankhead Act and also under the facts of this case, Petitioners could have made no beneficial use of their cotton without payment of the tax, the tax was paid under compulsion and duress, and they are entitled to recover the sums paid by them with interest.

3. Under the provisions of 26 U. S. C. A., Section 1670 (a) (1) and 26 U. S. C. A., Sections 1672-1673, (a) and (b), when a person has paid a tax which is void because the levying Act is unconstitutional, such person may recover the tax paid by him, whether or not he made the payment under compulsion or duress.

VI. ARGUMENT

First Point

Since under the provisions of the Bankhead Act and also under the facts of this case, Petitioners could have made no beneficial use of their cotton without payment of the tax, the tax was paid under compulsion and duress, and they are entitled to recover the sums paid by them with interest.

Second Point

Under the provisions of 26 U. S. C. A., Section 1670 (a) (1) and 26 U. S. C. A., Sections 1672-1673, (a) and (b), when a person has paid a tax which is void because the levying act is unconstitutional, such person may recover the tax paid by him, whether or not he made the payment under compulsion or duress.

It was shown that the bales of cotton with reference to which the taxes were paid by Petitioners were owned by Petitioners, and were of such character that the taxes paid were due by the terms of the Bankhead Act. It was also agreed that the Santo Tomas Gin Company, which had ginned the cotton, was in possession of it and refused to deliver the cotton to Petitioners unless they paid the tax of $13,064.52, incident to said cotton. The Cotton Control Act of 1934 (Bankhead Act) is the Act of April 21, 1934, 48 Stat. 598, c. 146, as amended by the Act of August 9, 1935 (Public Resolution 47, 74th Congress, H. J. Res. 258), and by the Act of August 24, 1935 (Pub. No. 320, 74th Congress, H. R. 8492). The repeal followed the decision of the Supreme Court in *United States v. Butler*, 297 U. S. 1, 56 Sup. Ct. 312; Act of February 10, 1936, 49 Stat. 1106.

The provisions of the Bankhead Act which are particularly important for consideration in connection with our First and Second Points are set out on pages 7 to 13 of this Brief.

Those who vote to determine whether the tax shall be levied are the producers, not the ginners. Section 3 (a).

Exemptions from the tax are based upon time, manner and character of production, not upon time, manner or character of ginning. Section 4 (e).

Exemptions from the tax are allowed to producers, not ginners. The producer is the one who must comply with the conditions and limitations imposed by the Secretary of Agriculture in order to obtain the exmption certificates. Section 6.

Quotas for exemptions are allowed to farms and farmers, not to gins or ginners. Section 7.

The lien of the tax is against the property of the producer, not of the ginner. Section 4 (f).

It is the property of the prodncer that cannot be transported beyond the county except for storing, and cannot be sold, purchased or removed from the bale until the tax has been paid. Section 13 (b).

The Secretary of Agriculture is authorized to make regulations protecting the interests of share croppers and tenants in the distribution of exemptions, not the interest of ginners. Section 15.

It is the producer's, not ginner's, past history and conduct that is material in fixing the exemption quota. Sections 5, 7 and 8.

That Congress had no intention that the ginner should be put to an expense in connection with the Act is shown by Section 17 (b), where the ginner is to be reimbursed up to 25c a bale for additional expense incurred by him in connection with the administration of the Act.

If it were merely a tax on ginning, why would the tax not be assessed upon all cotton ginned, wherever and whenever raised, and regardless of the amount raised on a particular farm?

It is common knowledge that the customary charge for ginning a 500 pound bale of lint cotton is approximately $6.00, yet the tax was approximately $30.00 a bale. Clearly, the ginner was not expected to pay the tax out of his ginning charges, or out of his own funds. The ginner was used merely as a convenient collecting agent to enforce the payment of the tax.

No beneficial use can be made of cotton until it is first ginned and baled, and then it cannot be used until the bale is opened. The Act made it impossible for a farmer to sell or make any beneficial use of his cotton until the tax was paid. Moreover, under the stipulations in this case, the ginner would not release the cotton to Petitioners until they personally paid the tax with their own checks, payable directly to the Defendant in this case.

We think the Circuit Court of Appeals was in error in saying:

> "The law applicable to this situation is thus stated in 61 C. J. p. 949, etc., Sec. 1226:
>
> 'Payment of taxes by a stranger, a mere volunteer . . . cannot be made the foundation of any right or claim on the part of such third person.'
>
> "Sec. 1227, p. 950:
>
> 'But a person cannot make the true owner of property his debtor by a mere voluntary payment of taxes thereon'."

Section 20 of the Bankhead Act reads:

"(Sec. 20) (b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund has been duly filed with the Commissioner of Internal Revenue according to the provisions of law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under due protest or duress. No suit or proceeding shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision therein within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the tax payer thereof by registered mail."

26 U. S. C. A., Sections 1672 and 1673, reads:

"(a) *Limitations*—(1) *Claim.* No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the

provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

"(2) *Time.* No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claims unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.

"(b) *Protest or Duress.* Such suit or proceeding may be maintained whether or not such tax, penalty or sum has been paid under protest or duress."

Judge Symes in his opinion said;

"In the following cases recovery of taxes paid by volunteers under circumstances more or less similar to those of the instant case were denied. Central Aguirre Sugar Co. v. U. S., 2 Fed. Supp. 538, Wourdeck v. Backer, 55 Fed. (2d) 840 (C. C. A. 8th), certiorari denied 286 U. S. 548; Clift and Goodrich v. U. S., 56 Fed. (2d) 751 (C. C. A. 2nd), certiorari denied 287 U. S. 617; Ohio Locomotive Crane Co. v. Denman, 73 Fed. (2d) 408 (C. C. A. 6th), certiorari denied 294 U. S. 712; Hammerstrom, County Treasurer, v. Toy Nat. Bank of Sioux City, 81 Fed. (2d) 628 (C. C. A. 8th)."

Of the cases cited in the opinion by Judge Symes, four were cases where the taxes were admittedly valid and were legally due from someone and were paid willingly by the one who sought to recover. In *Central Aguirre Sugar Co. v. U. S.*, supra, the tax was paid by the one who was ultimately liable for it. In *Wourdeck v. Becker*, supra, the president willingly paid a tax rightfully assessed

against a corporation in which he was interested. In *Clift & Goodrich, Inc. v. U. S.*, supra, the corporation willingly paid a valid tax against the partnership which it succeeded. In *Ohio Locomotive Crane Co. v. Denman*, a corporation willingly paid, with full knowledge of the facts, a tax actually and legally due from another.

All of these cases support our contention. The inference from them is that had the tax been illegal and not actually due from anyone, the person paying the tax would have been allowed to recover. In the language of the last case cited:

> "The amendment (1924) permits the recovery of taxes *illegally assessed or collected, regardless of whether payment was voluntary, or otherwise,* but it gives no aid to one who pays another's tax *actually due* with full knowledge of what he is doing."

The other case of *Hammerstrom v. Toy National Bank*, supra, and the cases there cited, dealt with situations to which the amendment of 1924 and the present laws eliminating the necessity of protest and duress were inapplicable.

Additional cases cited by Judge Symes are *Union Pacific Railroad Company v. Board of Commissioners*, 98 U. S. 541, 543, 25 Law Ed. 196; *Little v. Bowers*, 134 U. S. 547; *U. S. v. New York and Cuba Mail Steamship Co.*, 200 U. S. 488; *Blanks v. Hazen*, 85 F. (2d) 284; *Ward v. Love County*, 253 U. S. 17; *U. S. v. Edmondston*, 181 U. S. 500; *Chesebrough v. U. S.*, 192 U. S. 253.

Union Pacific Railroad Co. v. Board of Commissioners, 98 U. S. 541, 543, 25 Law Ed. 196. The Court said:

> "Before these payments were made there had been no demand for the taxes, and no special effort had been put forth by the treasurer for their collection. The Company had personal property in the county which might have been seized; but no attempt had been made to seize it, and no other notice than such as the law implies had been given that payment would be enforced in that way."

The Court said no attempt had been made by the treasurer to serve his warrant. He had not even personally demanded the taxes from the Company, and certainly nothing had been done from which his intent could be inferred to use the legal process he held to enforce the collection, if the alleged illegality of the claim was made known to him. This case was decided in *1879*, when it was necessary to pay under protest and duress, but even in that case the rule was recognized that where the payments were made to release goods held for duties a recovery was justified upon the fact that the payment was made to release property from detention.

Little v. Bowers, 134 U. S. 547, 33 Law Ed. 1016. This case was decided in *1890*. It was held that where a party pays an illegal demand with a full knowledge of all the facts which render such demand illegal, and without an immediate and urgent necessity therefor, and not to release his property or person from detention or to prevent an immediate seizure, such payment is deemed voluntary and cannot be recovered.

U. S. v. New York & Cuba Mail Steamship Co., 200 U. S. 488. In this case documentary stamps had been pur-

chased at various times without protest. Thereafter, the stamps were used by fixing them to manifests of cargoes on vessels bound for foreign ports. The Court said:

> "The destination of the stamps cannot affect the payment of the tax which they represent. It may be more or less of an inducement to submit to the tax, but who can determine the degree? . . . Besides, whatever element of coercion there was came from the United States, and it was not as immediate in the case of the manifests as in the case of the deed."

and again:

> "There was no claim to the collector of the port from whom the clearances were asked that the Defendant-in-Error was acting under the restraint of the law, and yielding only to enable ships to depart to their destinations."

This case was decided in *1906*, prior to the amendment to the Internal Revenue Act in 1924.

Ward v. Love County, 253 U. S. 17, 64 Law Ed. 751. This case was decided in *1920*. Mr. Justice Van Devanter said:

> "Through the pending suits and otherwise, they were objecting and protesting that the taxation of their lands was forbidden by a law of Congress. But, notwithstanding this, the county demanded that the taxes be paid, and by threatening to sell the lands of these claimants, and actually selling other lands, similarly situated, made it appear to the claimants that they must choose between paying the taxes and losing their lands. To prevent a sale and to avoid the imposition of a penalty of 18%, they yielded to the county's demand and paid the taxes, protesting and objecting at the time that the same were illegal.

The moneys thus collected were obtained by coercive means—by compulsion. The county and its officers reasonably could not have regarded it otherwise; much less the Indian claimants . . . . . *The County places some reliance on Lamborn v. Dickinson County, 97 U. S. 181, 24 Law Ed. 926, and Union Pacific Railroad Co. v. Dodge County, 98 U. S. 541, 25 Law Ed. 196; but those cases are quite distinguishable in their facts and some of the general observations therein to which the county invites attention must be taken as modified by the latter cases just cited.*"

(Italics ours).

One of the cases cited in the above case was *A. T. & S. F. Railway Co. v. O'Connor*, 223 U. S. 280, 56 Law Ed. 436. The opinion in that case was by Justice Holmes. In the course of his opinion he said:

"It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy . . . . when, as is common, the State has a more summary remedy such as distress, and the party indicates by protest that he is yielding to what he cannot prevent, *Courts sometimes, perhaps, have been a little too slow to recognize the implied duress under which payment is made*, but, even if the State is driven to an action if at the same time the citizen is put at a serious disadvantage in the assertion of his legal, in this case his constitutional, rights, by defense in the suit, justice may require that he should be at liberty to avoid those disadvantages by paying promptly and bringing suit on his side. He is entitled to assert his supposed right on reasonably equal terms. If he should seek an injunction . . . . he would run the same risk as if he waited to be sued." (Italics ours.)

This was made clear in *Lee Moor v. T. & N. O. Railroad*, 75 F. (2d) 386, where it was held that because of the legal remedy the mandamus there sought could not be had.

U. S. v. Edmondston, 181 U. S. 500, 45 Law Ed, 971. This was a case where a purchaser of public lands had paid $2.50 per acre instead of the statutory price of $1.25 per acre. The mistake was not induced by any misrepresentation of the Government or its officials, and it was held that there was no law by which the purchaser could sue the United States to recover the payment. The case was decided in *1901*, and had nothing to do with taxes.

Chesebrough v. U. S. 192 U. S. 253, 48 Law Ed. 432. This case was decided in *1904*. In that case, the Plaintiff sought to recover a sum expended in the voluntary purchase of revenue stamps from a collector to be affixed to a conveyance. The Court said that the purchase of the stamps was purely voluntary, and that there was no protest or notice at the time the stamps were purchased.

None of the cases cited by Judge Symes go so far as to hold that the facts in our case were not sufficient to show that the payment by Petitioners was made under duress. None of them hold that, since 1924, a person who has paid a tax which in fact was not legally due from any one, could not recover the tax, even though it was paid voluntarily. Surely, in this Court, it is not necessary to list the innumerable cases which have been decided since 1924 where it has been held that taxes which were voluntarily paid, and which were thought to be due from the tax payer at the time he made the payment, can, nevertheless, be recovered when it appears that the taxes

were not in fact legally assessed or *were not in fact due from the particular taxpayer*, or that the law under which they were assessed was invalid.

We shall, however, briefly refer to a number of cases which to some extent bear upon the questions which are here involved.

A Judgment directing a return to Plaintiffs of the money paid by them under a void statute is fully within the spirit of the decisions of this Court in *U. S. v. Jefferson Electric Mfg. Co.*, 291 U. S. 386, 54 Sup. Ct. 443, and *Anniston Mfg. Co. v. Davis, Collector*, 301 U. S. 337, 57 Sup. Ct. 816. This Court said in the latter case, with quotations from the former case:

> "But, we were unable to conclude that in imposing this restriction the section struck down prior rights or did more 'than to require that it be shown or made certain that the money when refunded will go to the one who has borne the burden of the illegal tax, and therefore is entitled in justice and good conscience to such relief'."

301 U. S. 349, 57 Sup. Ct. 822.

Petitioners here are certainly the ones who bore the burden of the illegal tax, and they are therefore entitled in justice and good conscience to judgment for its return.

We think that the case of *White v. Hopkins, Collector of Internal Revnue*, 51 F. (2d) 159, Fifth Circuit, July, 1931, is particularly applicable to our case. Taxes were assessed against the Imperial Gasoline Company, of which P. J. White was a stockholder. A warrant of dis-

traint was issued against the company in care of P. J. White. The Collector made demand upon White for payment of the taxes, and threatened to seize property belonging to White and to file suit against him. In fear of execution of said warrant and the institution of said suit, White made payment of the tax out of his own funds. Later, he made application for a refund of the taxes on the ground that he was not the taxpayer against whom the assessment was made, and that he had paid the tax under duress and threat of distraint. The claim was denied and suit was brought by White for the collection of the tax. The Court held that Appellant's case was governed by Revised Statutes, Section 3226. The Court said:

> "We need not discuss whether the compulsion alleged amounted to duress in law or whether the protest was sufficient, as neither duress nor protest was by this section necessary to be shown. He alleges compliance with the condition precedent of appealing to the Commissioner for a refund. The statute applies to the recovery of any tax 'in any manner wrongfully collected' from anyone, and is broad enough to support the cause of action alleged. There is no doubt from the allegations of the petition that the taxes were wrongfully collected."

The Court also said:

> "However, appellee contends that the Imperial Gasoline Co. was the taxpayer, as defined by the act, and that it neither appealed to the Commissioner nor brought the suit, and that no one but the Imperial Gasoline Company could appeal to the Commissioner or maintain a suit to recover back the taxes alleged in this case to have been illegally collected. *In other words, Appellee assumes the position that having*

collected the tax from one who did not owe it unless it could not have been legally collected from one who did, no right of redress exists. It cannot be assumed that the United States has adopted any such illogical and inequitable attitude towards her citizens unless the enactments of Congress clearly leave no alternative." (Italics ours).

The Court also said:

"The reasonable construction of the section is that the definition of 'tax payer' does not exclude other definitions in general use, and commonly understood. The dictionaries all define 'tax payer' as 'one who pays a tax'. *Undoubtedly, appellant paid the tax which he sought to recover back, and therefore would be a tax-payer under the usual and ordinary definition.* In paying the tax, appellant was not a mere volunteer. A tax imposed upon a corporation is indirectly a tax upon its stockholders. As a stockholder of the Imperial Gasoline Company he had an interest in paying the tax, although slight, to stop the running of the statute of limitations barring a suit to recover it back and to prevent further accumulation of interest. The Collector demanded payment of the tax and enforced collection by threats. Whether these threats could be made effective is immaterial. They were sufficient to operate on the mind of appellant and induce him to make payment against his will. The Commissioner received the money and retained it. He entertained and passed upon the application for a refund, and notified appellant personally of the rejection of his claim without suggesting that he did so because he was not considered the tax payer." (Italics ours)

We think that the spirit in which a case of this character should be considerd is properly described in *George Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 378, 53 Sup. Ct. 620, 622, opinion by Mr. Justice Cardozo, 1933. The Court said:

> "In this situation, the government was unjustly enriched at the expense of a taxpayer, when it held on to moneys that had been illegally collected, whether with protest or without. So, at least, the lawmakers believed and gave expression to that belief, not only in the statute but in Congressional reports. Separate Report No. 398, 68th Congress, First Session, pp. 44, 45; House Report No. 179, 68th Congress, First Session, pp. 33, 34. The amendment was designed to right an ancient wrong. It did not draw a distinction between suits against the body politic and suits against a public officer who was to be paid out of the public purse. It put them in a single class, and made them subject to a common rule. A high-minded government renounced an advantage that was felt to be ignoble and set up a new standard of equity and conscience. There was no thought to discriminate between payments made and those to come. A fine sense of honor had brought the statute into being. We are to read it in a kindred spirit. U. S. v. Emery, 237 U. S. 28, 59 Law Ed. 825."

In the case of *U. S. v. Arnold*, 89 F. (2d) 246 (Third Circuit, February 4, 1937), the Court had for consideration a case in which the Trustees had paid a tax which should have been paid by the beneficiaries. The Trustees had paid a tax for which thy were not legally liable. The tax was in fact due from the beneficiaries. The Court held that the Trustees might recover, even though the claim against the beneficiaries had become barred by

limitations. Here was a case where a party not legally liable for a tax had paid it voluntarily, but nevertheless was permitted to recover.

In *Dorrance v. Phillips, Collector*, 85 F. (2d) 660, 662, (Third Circuit, August 31, 1936), the Court said:

> "The payments were accordingly not voluntary, but even if they had been, under Section 1014 of the Revenue Act of 1924 (43 Stat. 343) in force at the time the payments were credited to the Lackawanna Company, they may be recovered. Moore Ice Cream Co. v. Rose, 289 U. S. 373, 53 Sup. Ct. 620; U. S. v. Scott, 69 F. (2d) 728."

In *U. S. v. Scott*, 69 F. (2d) 728, 731 (First Circuit, March 14, 1934), the Court said:

> "It is urged by the government, however, that the deficiency assessment against the corporation of $96,803.87 was paid voluntarily by the corporation, and if so, it cannot be recovered. This was true at common law, but Section 1014 of the Act of 1924 (26 U. S. C. A., Section 156), in force at the time this payment was made, modified the common law rule."

Jenkins v. Smith, Collector, 21 F. Supp. 433, 437. In this case, the Court held that the element of estoppel by voluntary payment was eliminated by the fact that the former condition precedent to a suit to recover taxes illegally collected or payment under protest or duress, had been abolished. Section 3226, R. S., as amended (26 U. S. C. A., Sec. 1672, 1673). The Court said that every tax collection was now necessarily considered to be involuntary.

Weir v. McGrath, 52 F. (2d) 201. This was a suit brought against the collector. There was no formal protest of any kind but the claim was made that the taxes were illegally demanded. The deputy collector told the president of the company that the taxes must be paid or the officers of the company would expose themselves to criminal prosecution. The Court was of the opinion that this was sufficient to constitute coercion and duress. It is sufficient when the party indicates by protest that he is yielding to what he cannot prevent. This constitutes implied duress, but the Court said that the amendment of 1924 did away with the necessity for protest and duress. The Court said that the statute of 1924 was a recognition of the fact that the recovery against the collector is in substance and effect a recovery from the government, and that the statute is an example of liberality and fairness upon the part of the government showing its unwillingness to retain the benefit of that which was wrongful, whether the technicalities formerly required had been complied with or not. This rule was applied in the suit against the collector.

Lucas v. Kentucky Distilleries and Warehouse Co., 70 F.(2d) 883. Here, a corporation owned a distillery plant, but the plant was conducted in the name of its employee, Wilkin. The tax claimed to be illegal was actually paid by the Company, and the Company brought suit to recover the tax. The collector, as a part of his defense, claimed that the distillery was a mere volunteer, and that therefore it could not sue to recover the tax which it had paid. The Court held:

"Wilkin had no interest in the property and to

protect itself from distraint the appellee was compelled to pay the tax and its only remedy was to protest and to sue to recover it back."

The Court said:

"Moreover, Revised Statute 3251 (26 U. S. C. A. Section 249), imposes a joint and several liability for taxes on distilled spirits, upon every proprietor or possessor, and any person in any manner interested in the use of any still, distillery or distilling apparatus, and impresses a lien on any land or buildings wherein such spirits are in existence. To say that the owner of land upon which the statute impresses a lien for taxes may not in discharging the lien question the validity of the tax requires a rather strained interpretation of his status as taxpayer."

In our case, the lien was upon the cotton of Petitioners.

Austin National Bank v. Sheppard, Comptroller, 71 S. W. (2d) 242 (Commissioner of Appeals of Texas, 1934). The Court said:

"A person who pays an illegal tax under duress has a legal claim for its repayment.

* * *

"Duress in the payment of an illegal tax may be either express or implied, and the legal duty to refund is the same in both instances. 26 R. C. L. 457, Section 413. When the statute provides that the tax payer who fails to pay the tax shall forfeit his right to do business in the state and have the Courts closed to him, he is not required to take the risk of having his right to resort to the Courts disputed

and his business injured while the invalidity of the tax is being adjudicated. 26 R. C. L. 458.

* * *

"Under Article 1529, R. C. S., this Company was required to file with the Secretary of State a certified copy of its character. This it did.

* * *

"The fee of $2500.00 paid for filing the amended charter was demanded and paid while the asphalt company's ten-year permit to do business was in full force. It did not legally owe such fee. If the asphalt company had refused to pay such fee, it could not have gotten its charter amendment filed without resorting to the courts, and would have run the risk of having its right to do business in this state and its right to resort to the courts of this state called in question during the litigation. Also during such period it would have run the risk of having its business greatly hampered and injured. Under such a record, we hold that the asphalt company paid this tax or fee under implied duress, and not as a volunteer. We further hold that under the rules of law above announced, the state is legally liable to repay this tax so illegally demanded and collected."

Under some of the authorities which we have cited, if the Santo Tomas Gin Company had, under the facts of this case, brought a suit against the Collector to recover these taxes, because of the unconstitutionality of the Bankhead Act, it is conceivable that the Court might have held that the evidence showed that the tax was paid

by Stahmann Farms, that it was not paid by Santa Tomas Gin Company, that it had suffered no injury, and that therefor it was not entitled to recover the tax.

A similar view was taken by the Supreme Court of Illinois in *Standard Oil Company v. Bollinger*, 180 N. E. 396. In that case, it was held that where the Standard Oil Company had collected the gasoline tax from its customers, and had willingly paid the tax to the Tax Collector, it could not recover because it had not paid the tax out of its own funds. The Court held that the Standard Oil Company had suffered no loss, because of the fact that the funds used by it in paying the tax had been collected by it from others.

The case of *Benzoline Motor Fuel Co. v. Bollinger*, 187 N. E. 657, Supreme Court of Illinois, 1933, deserves consideration. The Benzoline Motor Fuel Company brought suit against Bollinger, Director of Finance of the State of Illinois, to recover a gasoline tax paid by it to the State Treasurer, in the amount of $24,268.90. The law under which the tax had been collected had been previously declared to be unconstitutional in another case brought by another taxpayer. The contention was made that the tax had not been paid by the plaintiff, but by its customers. Plaintiff, however, claimed that it brought the suit not only for its own benefit, but for the benefit of its customers, to whom it had agreed to make a refund if the tax should be collected. It was claimed that the tax had been voluntarily paid, but the tax payer claimed payment under duress. The Court said:

> "It is not necessary that the party paying the tax be in physical danger, or that he be actually placed

in a position that his property is about to be seized, in satisfaction of the tax, or that his back be to the wall, so to speak. Chicago and Eastern Railway Co. v. Miller, 140 N. E. 823. That case clearly held with the well known rule that a person who accepts the benefits of a statute is generally barred thereafter from challenging its validity, provided no question of public policy or public morals is involved; but where it is an involuntary acceptance of the statutory provisions, or where money is paid under the pressure of severe statutory penalties or to avoid disastrous effects to business the payment is involuntary and the money may be recovered. Union Pacific Railway Co. v. Public Service Commission, 248 U. S. 67, 63 Law Ed. 131. Virtual or moral duress is sufficient to prevent a payment made under its influence from being voluntary. Robertson v. Frank Bros. Co., 132 U. S. 17, 33 Law Ed. 236. Where such duress is exerted under circumstances not justified by law it need only be sufficient to influence the apprehensions and conduct of a prudent businessman. If the duress is exerted by one clothed with official authority or who is exercising a public employment, less evidence of compulsion or pressure is required. Justice Holmes, speaking for the Court in A. T. & S. F. Railway Co. v. O'Connor, 223 U. S. 280, 56 Law Ed. 436, said: 'It is reasonable that a man who denies the legality of a tax should have a clear and certain remedy. The rule being established that, apart from special circumstances, he cannot interfere by injunction with the State's Collection of its revenues, an action at law to recover back what he has paid is the alternative left. Of course, we are speaking of those cases where the State is not put to an action if the citizen refuses to pay. In these latter, he can interpose his objections by way of defense; but when, as is common, the state has a more summary remedy such as distress, and the party

indicates by protest that he is yielding to what he cannot prevent, courts sometimes, perhaps, have been a little slow to recognize the implied duress under which payment is made.' The evidence for the complainant demonstrated that the Director of Finance intended to take, and did take, all necessary steps to collect the tax imposed on motor fuel, regardless of all questions then raised as to the invalidity of the law. The necessary forms were prepared and sent to all distributors in the State by employees in his office. No indication or hint according to the record, was ever given out that the law would not be enforced. We regard as unimportant the argument advanced that the Director of Finance did not make any threats or coerce any one into paying the tax. The statute designated and empowered that official to collect the tax. *The penalties for non-payment of the tax were not formulated as rules and regulations by the Director; they were part of the statute, so that the statute—not the director—was proclaiming the penalties to the motor fuel distributors of the State.* The distributors had every right to indulge in the legal presumption that an officer of the State would live up to his oath of office to perform the duties imposed upon him by law. The evidence disclosed actions on the part of the Director of Finance of such character as to constitute duress well within the rule laid down in the cases above cited." (Italics ours)

The Court said that from the evidence it was apparent that the complainant was acting for the benefit of its customers, as well as for itself; that the facts of the case were such that the Court should hold that the Director of Finance is in control of money that in equity and good conscience he has no right to retain, inasmuch as the suits for the return of the tax money in full to the customers of the complainant without any deductions was straight and broad. The Court said:

> "To contend that this litigation is an endeavor to give to customers indirectly what the law does not give directly is only to say that the interests of the customers are such that this suit cannot prevail, which in this particular instance would mean that the customers would lose. Such a decision would violate equity and good conscience, as by it the State would receive and retain money illegally collected under an unconstitutional law by resting its right on a technicality and not upon the basic principles of justice."

The Court distinguished the case under consideration from the case of *Standard Oil Co. v. Bollinger*, supra. In the *Benzoline Motor Fuel Company* case, the Court pointed out that the Company had collected the tax from its customers with the agreement that it would seek to recover the tax, and in such event would refund it to the customers.

In our case, it is apparent that the Santo Te... Company is making no claim for a refund, that t... for making such claim has expired, and that if ... recovered the tax, it would be in duty bound to ... over to Stahmann Farms. The real taxpayers ... Petitioners in this case, and a grave injustice ... done if they were denied a recovery on the highly ... nical theory urged by Respondent.

We respectfully request that the Judgment of the ... cuit Court of Appeals for the Tenth Circuit be reve... with directions to affirm the Judgment of the Trial C...

Respectfully submitted,

THORNTON HARDIE,
Of El Paso, Texas,
Attorney for Petitio...

W. C. WHATLEY,
Of Las Cruces, New Mexico,

R. NEILL WALSHE,
Of El Paso, Texas,
Of Co...

FILE COPY

No. [redacted] 12

In the Supreme Court of the United States

October Term, 1957

STARMANN FARMS, a Co-partnership Composed of D. F. STARMANN, ANNA M. STARMANN, and JOYCE F. STARMANN, PETITIONERS

v.

S. P. VIDAL, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEW MEXICO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

INDEX

CITATIONS

Miscellaneous:

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 877

STAHMANN FARMS, A CO-PARTNERSHIP COMPOSED OF D. F. STAHMANN, ANNA M. STAHMANN, AND JOYCE F. STAHMANN, PETITIONER

v.

S. P. VIDAL, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEW MEXICO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 31–35) is reported at 93 F. (2d) 902. The findings of fact and conclusions of law entered by the District Court are printed in the record at pages 16–17.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 27, 1937 (R. 35). A peti-

tion for rehearing (R. 37–45) was filed January 25, 1938, and was denied by the Circuit Court of Appeals on February 5, 1938 (R. 47). The petition for certiorari was filed March 16, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioner, a producer of cotton who paid the tax imposed by the Bankhead Cotton Act upon the ginner who ginned cotton grown by the petitioner, can maintain an action for recovery of the tax so paid.

The petitioner also asks the Court to pass upon the constitutionality of the Bankhead Cotton Act, a question not passed upon by the court below because not necessary to its disposition of the case.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Act of April 21, 1934, and of Treasury Regulations 84 are printed in the Appendix, *infra*, pp. 16–31.

STATEMENT

This action was instituted by the petitioner in the United States District Court for the District of New Mexico to recover the sum of $13,064.52 paid to the respondent under authority of the Bankhead Cotton Act, c. 157, 48 Stat. 598. The action was based upon the alleged unconstitutionality of that Act (R. 1–3).

The respondent, in an amended answer, denied that the Act was unconstitutional and affirmatively alleged as a further defense that the petitioner was not liable under the statute to pay the amount sued for; that if it paid to the respondent the amount sued for it did so in discharge of a liability imposed upon a person or persons other than the petitioner; and that, therefore, the petitioner was not entitled to maintain the action for recovery of the amount paid (R. 5–7).

A jury trial was waived in writing (R. 5) and the cause submitted to the court for decision upon a written stipulation of facts (R. 7–10) which was approved by the court (R. 11). A request for special findings of fact and conclusions, and a motion for judgment, were filed by the respondent (R. 11–15) and were denied by the court. The respondent duly excepted (R. 16, 27). Upon consideration, the court made findings of fact and conclusions of law in favor of the petitioner and entered judgment for the petitioner on January 30, 1937 (R. 18).

On an appeal to the Circuit Court of Appeals for the Tenth Circuit that court, basing its decision upon the affirmative defense pleaded by the respondent, held that the tax imposed by the Bankhead Cotton Act was a tax imposed upon the ginning of cotton; that the ginner was made liable for the tax; that this petitioner, not being liable for the tax in question, made payment as a volunteer and

that it, therefore, was not entitled to maintain this action for recovery. In view of its decision on this question the court refrained from passing upon the alleged unconstitutionality of the Bankhead Cotton Act (R. 31–35.)

The facts alleged in the complaint and admitted in the respondent's amended answer, supplemented by the written stipulation of facts filed by the parties, are briefly as follows:

During the crop year 1934–1935 the petitioner was engaged in Dona Ana County, New Mexico, in the growing of cotton, and was and has been for many years prior thereto cultivating in excess of 2,000 acres of land. During that crop year it produced a quantity of cotton in excess of the allotment for which, under the terms of the Bankhead Cotton Act, it was entitled to obtain tax exemption certificates. The petitioner delivered this cotton to the Santo Tomas Gin Company of Mesquite, New Mexico, to be ginned. The Santo Tomas Gin Company ginned the petitioner's cotton and filed monthly returns with the respondent for the months of October, November, and December 1934, as the ginner of petitioner's cotton. The returns thus filed showed a tax due in the amount of $13,064.52. Of this amount the sum of $11,193.99 was assessed against the Santo Tomas Gin Company in December 1934, and was paid to the respondent by checks drawn by Stahmann Farms (the petitioner) payable to the Collector of In-

ternal Revenue. These checks were dated November 27, 1934, November 28, 1934, and December 13, 1934, and were for the respective amounts of $9,131.44, $1,550.23, and $512.32. The sum of $1,870.53 was assessed against the Santo Tomas Gin Company in January 1935, and was paid to the respondent by a check for that amount drawn by Stahmann Farms (the petitioner) payable to the Collector of Internal Revenue and bearing the date January 19, 1935 (R. 1, 2, 6, 7–8).

The Santo Tomas Gin Company declined to deliver the ginned cotton to the petitioner until the above assessments against it were paid. The respondent applied these payments by petitioner against the assessments outstanding on its books under the name of Santo Tomas Gin Company, Mesquite, New Mexico (R. 8–9).

On March 6, 1935, the petitioner filed a claim for refund of $13,064.52 with the Collector of Internal Revenue for the District of New Mexico, its claim being based upon the alleged unconstitutionality of the Bankhead Cotton Act. The Commissioner of Internal Revenue rejected this claim on August 22, 1935 (R. 9). The instant suit followed.

ARGUMENT

The petitioner asserts that a writ of certiorari should be granted in this case for the reason that the court below decided important questions of Federal law which have not been, but which should

be, settled by this Court, and for the further reason that the court below erred in failing to hold the Bankhead Cotton Act unconstitutional (Br. 10–13).

The only question decided by the court below is whether the petitioner may, under the facts, maintain this action for recovery of taxes assessed and collected under authority of the Bankhead Cotton Act (R. 31–35). We submit that the court below correctly held that the petitioner is not entitled to maintain this action, and that it did not err in failing to pass upon the questions relating to constitutionality of the Act.

1. Section 4 (a) of the Bankhead Cotton Act imposed a tax "on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect." Section 4 (c) provides that "Every person ginning any cotton subject to tax under this Act (whether as agent of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done." It is further provided that the tax shall, without assessment or notice "be due and payable to the collector at the time so fixed for filing the return." The Commissioner's regulations were in accordance with these provisions. See Treasury Regulations 84 (1935 Edition), Articles 7, 8, 11, and 12. The only exception to these provisions, and which is not applicable under the

facts of this case, is contained in Section 4 (f) which provides that the tax shall not be collected upon the ginning of cotton which is to be stored by the producer either upon his farm or at some other place permitted by regulation. In such cases the payment of tax is postponed until bale tags are obtained, either by payment of the tax or surrender of tax exemption certificates. See Articles 13 and 21 of Regulations 84 (1935 Edition) covering returns by the ginner and producer and the payment of tax in such cases.

Under the law and the Commissioner's regulations the Santo Tomas Gin Company was required to, and did make returns of the tax due upon the ginning of petitioner's excess cotton. That company was also made liable by the Act and the regulations for payment of the tax, which, however, was in fact paid by the petitioner.

With respect to recovery of taxes collected under the Bankhead Cotton Act, Section 14 (a) of the Act made applicable to the taxes imposed under the Act all provisions of law, including penalties, applicable with respect to taxes imposed by Section 800 of the Revenue Act of 1926, in so far as applicable and not inconsistent with the provisions of the Act itself. Thus Section 3220 of the Revised Statutes [1] authorizing the Commissioner to credit or refund

[1] As amended by Section 1111 of the Revenue Act of 1926, c. 27, 44 Stat. 9, and Section 619 (b) of the Revenue Act of 1928, c. 852, 45 Stat. 791 (U. S. C., Title 26, Secs. 1670, 1676).

any amount erroneously or illegally collected under the Act was made applicable. Section 20 of the Act authorized the filing of refund claims and the maintenance of suits to recover where refund was not made by the Commissioner.

The Act of February 10, 1936, c. 42, 49 Stat. 1106, repealed the Bankhead Act in its entirety, and without any saving clause. There is, therefore, considerable doubt that petitioner can rely on the provisions for refund and the maintenance of suit. But, at this stage, it is unnecessary to explore this field, for the Santo Tomas Gin Company was the party made liable for the tax collected on the ginning of the cotton here involved, and is the only party which was given authority to claim a refund or sue for recovery. There is no legal basis upon which this petitioner could maintain an action for recovery. Moreover, to permit the petitioner to recover would not necessarily preclude recovery of the same amount by the ginner, if he were otherwise entitled to sue and recover the taxes paid.

In so far as the relationship between the petitioner and the respondent is concerned it is clear that payment was made by the petitioner as a mere volunteer, and was made to discharge a liability asserted against Santo Tomas Gin Company. No claim against petitioner was made, or could have been made, by the collector. Petitioner, by the payment, discharged no liability of its own. Under such circumstances the court below correctly held

that the petitioner cannot maintain this action to recover. The decision is fully supported by the authorities. See *Ohio Locomotive Crane Co.* v. *Denman*, 73 F. (2d) 408 (C. C. A. 6th), certiorari denied, 294 U. S. 712; *Clift & Goodrich* v. *United States*, 56 F. (2d) 751 (C. C. A. 2d), certiorari denied, 287 U. S. 617; *Wourdack* v. *Becker*, 55 F. (2d) 840 (C. C. A. 8th), certiorari denied, 286 U. S. 548; *Mahoning Inv. Co.* v. *United States*, 3 F. Supp. 622 (C. Cls.), certiorari denied, 291 U. S. 675; *Daube* v. *United States*, 59 F. (2d) 842 (C. Cls.), affirmed on another issue, 289 U. S. 367; *Combined Industries, Inc.* v. *United States*, 15 F. Supp. 349 (C. Cls.).

In *Wourdack* v. *Becker*, *supra*, a former president of two dissolved corporations was denied a recovery of additional taxes assessed against the corporations and voluntarily paid by him. In *Daube* v. *United States*, *supra*, the plaintiff had been allowed an over-assessment of a certain sum which he directed the Commissioner to credit against taxes due from a partnership of which he was a member. The Court of Claims held that he could not recover the amount applied against the partnership tax although the credit was made after the period for collecting from the partnership had expired. In granting certiorari the Supreme Court limited its review to another question in the case. 288 U. S. 597. In *Clift & Goodrich* v. *United States*, *supra*, a corporation organized in

1919 to take over the assets and business of a partnership voluntarily paid a tax which should have been paid for the partners for 1918 and the court denied recovery. In the other cases cited one corporation voluntarily paid the tax of another, either a subsidiary or a predecessor, and the courts refused to permit recovery.

In *United States v. Johnston*, 268 U. S. 220, the defendant, who had collected admission taxes from his patrons, and who was required by statute to pay such taxes over to the United States, had been convicted on a charge of embezzlement because he had failed to pay to the Collector the sums collected. The taxes had actually been paid by the defendant's patrons, as was the tax liability of Santo Tomas Gin Company paid by the petitioner, and the prosecution based its charge upon misappropriation of funds held for the benefit of the Government. This Court held that conviction on a charge of embezzlement was erroneous for the reason that the taxpayer was a debtor and not a bailee and that the retention by him of the funds collected could not amount to embezzlement. In the course of its opinion the Court declared (pp. 226–227):

> * * * it seems to us that under this law the person required to pay over the tax is a debtor and not a bailee. The money paid for the tax is not identified at the outset but is paid with the price of the ticket that belongs to the owner of the show.

> * * * Reports are required only once a month, §§ 802, 502, which does not look as if the Government were dealing with these people otherwise than with others answerable for a tax. Further argument seems unnecessary upon this point.

There are, of course, certain exceptions to the rule laid down by the above cases; but none of them is applicable here. These exceptions arise in cases such as *White* v. *Hopkins,* 51 F. (2d) 159 (C. C. A. 5th), where the tax was apparently demanded from the plaintiff as a transferee and was actually paid to the Collector under duress. Cases in which the plaintiff succeeds to the right of the taxpayer by operation of law may also be considered an exception although clearly inapplicable under the facts of this case.

Petitioner does not challenge the correctness of the authorities relied upon by the court below. Nor does he cite any decision as being in conflict with the decision below. Collection of the amount here involved was not made under circumstances which would make the decisions relied upon by the petitioner (Br. 35–43) applicable here. The amount involved was not assessed against the petitioner and no demand for payment was made upon petitioner by the respondent. If any compulsion was exerted upon petitioner it was by the ginner whose liability petitioner discharged and not by the taxing officials.

The tax was undoubtedly imposed on the ginner in an amount which was determined by the tax exemption certificates awarded to petitioner, which in turn was determined by the petitioner's crop history, etc., rather than by circumstances relating to the ginner (see Pet. 23–24). But this does not serve to make the petitioner the one liable for the taxes, or his voluntary payment one which was coerced by the respondent.

The tax, accordingly, was imposed upon the Santo Tomas Gin Company and payment was made on behalf of that company. Yet the petitioner argues that it bore the burden of the tax and that it is, therefore, the real taxpayer. If so, this was a burden taken upon itself, by a voluntary act, and was not one imposed on it by the Act of Congress or by the tax officials. So far as the Government is concerned, the tax was collected from the ginner. The ginner is not a party to this record. It is not at all clear that it would be bound or estopped by any judgment in this processing. The claim of the gin company has not and cannot be assigned to the petitioner. See Revised Statutes, Section 3477; *United States* v. *Gillis*, 95 U. S. 407; *Ball* v. *Halsell*, 161 U. S. 72. Certainly, the petitioner should not be allowed to recover on an unassigned claim of the ginner when its specific assignment is forbidden. To allow the petitioner to recover taxes assessed against the ginner would mean either that the Government must

accept, at its peril, voluntary arrangements for the payment of taxes made by private persons or must be compelled to litigate the legality of tax collections not with the taxpayer but with a volunteer. Either alternative would seem a dangerous distortion of the accepted methods of tax administration.

In several recent cases the Government has sought to defend against recovery of taxes paid on dues of admission by the club or ticket seller on the ground that in reality the taxpayer was merely a collecting agency. Almost without exception, however, the courts have rejected this contention. Two of the leading cases on this point are *Builders' Club of Chicago* v. *United States*, 14 F. Supp. 1020 (C. Cls.), and *Alliance Country Club* v. *United States*, 62 C. Cls. 579. In both of these cases the money used to pay the taxes was furnished by individual members of the clubs. The clubs, however, were required by statute to collect the money and turn it over to the Collector of Internal Revenue. The Government therefore argued, as the petitioner argues here, that the taxes had actually been paid by individual members of the respective organizations and the clubs could not maintain an action for a refund without express authorization of their members. The courts held, however, that the persons made liable by the Act to pay over to the Collector the taxes imposed were the real taxpayers.

In further justification of its position the petitioner argues that if Santo Tomas Gin Company had sued to recover the amount involved it is conceivable that recovery would have been denied because the gin company suffered no injury, since payment was actually made by petitioner, and that a grave injustice will be done if petitioner is denied a recovery. Whether the gin company could have recovered is not involved in this case. Furthermore, it is not shown that petitioner has suffered any injury by payment of the tax, or that it was not fully compensated for that payment when its cotton was sold. So far as the broader equities are material, it may be noted that petitioner received the benefit of higher prices, obtained through crop reduction by its competitors, without reducing its own production.

2. In view of its decision on this question, which we submit is correct, the court below did not err in failing to pass upon questions relating to the constitutionality of the Bankhead Cotton Act. The constitutionality of that Act is the only question involved in *United States* v. *Lee Moor*, No. 854, present Term, now pending before this Court on petition for certiorari filed by the United States. Questions relating to the validity of the Bankhead Cotton Act are not materially different from the questions relating to constitutionality of the Kerr-Smith Tobacco Act, c. 866, 48 Stat. 1275. That Act was held unconstitutional by the Circuit Court of

Appeals for the Sixth Circuit in *Glenn* v. *Smith*, 91 F. (2d) 447, and the petition for certiorari, No. 39, present Term, was denied by this Court on March 28, 1938. If similar disposition is made of the petition for certiorari in *United States* v. *Lee Moor*, *supra*, and if the Court should grant the instant petition for certiorari, the Government suggests that it be limited to the question decided by the court below.

CONCLUSION

The decision of the court below is correct. The Government should not be required to litigate, or to accept at its peril without litigation, voluntary arrangements by which volunteers, against whom the Government has made no claim, seek to stand in the place of the taxpayers designated by law. There is no conflict of authorities. The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

JAMES W. MORRIS,
Assistant Attorney General.

SEWALL KEY,
F. E. YOUNGMAN,
Special Assistants to the Attorney General.

APRIL 1938.

57454—38——3

APPENDIX

Bankhead Cotton Act, c. 157, 48 Stat. 598 (U. S. C., Title 7, c. 27):

* * * * *

TAX AND EXEMPTIONS

SEC. 4. (a) There is hereby levied and assessed on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. If the cotton was harvested during a crop year with respect to which the tax is in effect, the tax shall apply even if the ginning occurs after the expiration of such crop year.

(b) The average central market price, per pound of lint cotton, shall be the average price per pound of basis seven-eighths-inch middling spot cotton on the ten spot cotton markets (designated by the Secretary of Agriculture) as determined and proclaimed from time to time by the Secretary of Agriculture. The average central market price determined and proclaimed shall be the base for determining the rate of the tax until a different average central market price for lint cotton is determined and proclaimed by the Secretary of Agriculture.

(c) Every person ginning any cotton subject to tax under this Act (whether as agent

of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done, or to such other person as such collector may direct. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid.

(d) When the Secretary of Agriculture does not proclaim an allotment of cotton for a crop year as provided in section 3 of this Act, the tax shall not apply with respect to cotton harvested during such crop year but shall apply to cotton harvested during the next crop year for which, with the approval of the President, the Secretary makes an allotment under such section.

(e) No tax shall be imposed under this Act with respect to—

(1) Cotton harvested by any publicly owned experimental station or agricultural laboratory.

(2) An amount of cotton harvested in any crop year from each farm equal to its allotment.

(3) Cotton harvested prior to the crop year 1934–1935.

(4) Cotton having a staple of one and one half inches in length or longer.

(f) The tax shall not be collected upon the ginning of cotton which is to be stored by the producer thereof either on the farm or at such other place as may be permitted by regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury. In such cases, the payment of the tax shall be postponed, but shall be paid at the time when bale tags are secured for such cotton. Bale tags may be secured for any of such cotton at any time after ginning (1) upon the payment to such person as the Commissioner may direct, of the amount of tax which would have been payable at the time of ginning, or (2) upon the surrender of certificates of exemption covering an amount of cotton not less than the amount of such cotton. Until bale tags are secured for such cotton, such cotton shall be subject to a lien in favor of the United States for the amount of the tax payable with respect to the ginning of such cotton. The right to postponement of the payment of the tax under this subsection shall be established in accordance with such regulations as the Secretary of Agriculture and the Secretary of the Treasury may prescribe. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe regulations providing for stamping the containers of such cotton so as to indicate the time of ginning and the amount of tax payable with respect thereto.

(g) The right to exemption under paragraph (2) of subsection (e) shall be evidenced by a certificate of exemption issued as herein provided, which certificate of exemption shall be conclusive proof of the right to such exemption.

* * * * *

REGULATIONS BY THE COMMISSIONER

SEC. 12. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying bale tags, and the method of accounting for receipts from the sale of and for the use of such bale tags, and (b) such other regulations as he shall deem necessary for the enforcement of the taxing provisions of this Act.

INFORMATION RETURNS

SEC. 13. (a) All persons, in whatever capacity acting, including producers, ginners, processers of cotton, and common carriers, having information with respect to cotton produced, may be required to make a return in regard thereto, setting forth the amount of cotton delivered, the name and address of the person who delivered said cotton, the amount of lint cotton produced therefrom, and any other and further information which the Commissioner, with the approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations prescribe as necessary for the proper administration of the tax. Any person required to make such return shall render a true and accurate return to the Commissioner.

(b) Any person willfully failing or refusing to file such a return, or filing a willfully false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

GENERAL AND PENAL PROVISIONS

SEC. 14. (a) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 800 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable with respect to taxes imposed by this Act.

(b) Except as may be permitted by regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury, with due regard for the protection of the revenue, no person shall: (1) Transport, except for storing or warehousing, under the provisions of section 4 (f) beyond the boundaries of the county where produced any lint cotton to which a bale tag issued under this Act is not attached; or (2) sell, purchase, or open any bale of lint cotton to which a bale tag issued under this Act is not attached.

(c) No seed cotton harvested during a crop year with respect to which the tax is in effect shall be exported from the United States or any possession thereof to which this Act applies to any possession of the United States to which this Act does not apply or to any foreign country.

(d) Any person who willfully violates any provision of this Act, or who willfully fails to pay, when due, any tax imposed under this Act, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any bale tag or certificate of exemption made or used under this Act, or who uses, sells, or has in his possession any such forged, altered, or counterfeited bale tag or certificate of exemption, or any plate or die used, or which may be used in the manufac-

ture thereof, or has in his possession any bale tag which should have been destroyed as required by this Act, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such bale tag or certificate of exemption, or who reuses any bale tag required to be destroyed by this Act, or who places any cotton in any bale which has been filled and stamped, tagged, or otherwise identified under this Act, without destroying the bale tag previously affixed to such bale, or who affixes any bale tag issued under this Act to any bale of lint cotton on which any tax due is unpaid, or who makes any false statement in any application for bale tags or certificates of exemption under this Act, or who has in his possession any such bale tags or certificates of exemption obtained by him otherwise than as provided in this Act, shall on conviction be punished by a fine not exceeding $1,000, or by imprisonment for not exceeding 6 months, or both.

(e) Any person who willfully violates any regulation issued by the Secretary of Agriculture or the Secretary of Agriculture and the Secretary of the Treasury under this Act, for the violation of which a special penalty is not provided, shall, on conviction thereof, be punished by a fine not exceeding $200.

COLLECTION OF TAXES

SEC. 19. The taxes provided for by this Act shall be collected by the Commissioner of Internal Revenue under the direction of the Secretary of the Treasury. Taxes collected shall be paid into the Treasury of the United States.

REFUNDS

SEC. 20. (a) No refund of any tax, penalty, or sum of money paid shall be allowed under this Act unless claim therefor is presented within six months after the date of payment of such tax, penalty, or sum.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No suit or proceeding shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision therein within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by registered mail.

Treasury Regulations 84 (1935 Edition):

ART. 5. *Measure of the tax.*—The measure of the tax is the number of pounds of lint-

cotton resulting from the ginning of seed cotton. The actual weight, or an average representative of the actual weight, of bagging and ties may be deducted as tare in computing the number of pounds of lint cotton resulting from the ginning of seed cotton.

ART. 6. *Rate of tax.*—The rate of tax on the ginning of cotton is 50 per cent of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. Such average central market price will be determined by the Secretary of Agriculture, and thereafter such rate will be announced by the Commissioner. If the rate is changed, the new rate and the effective date thereof will be announced by the Commissioner.

ART. 7. *When tax attached.*—The tax attaches upon the ginning of the cotton.

ART. 8. *Liability for the tax.*—Liability for the tax attaches to the ginner immediately upon the ginning of cotton, except that where payment of the tax is postponed as provided for in article 13, liability for the tax attaches to the producer. (See article 21.)

ART. 9. *Exemption from the tax on ginning.*—(a) The ginning of cotton harvested during the effective period shall be exempt from the tax to the extent that any cotton so ginned is covered by tax exemption certificates. Cotton tax-exemption certificates are issued to producers of cotton by the Secretary of Agriculture. At the time of ginning, the ginner shall detach coupons from the producers' cotton tax-exemption certificate in an amount sufficient to cover (to the nearest 5 pounds) the amount of lint cotton ginned and contained in each bale or other package.

A cotton tax-exemption certificate presented to a ginner which does not bear the name of the person presenting it, or is not presented by the agent of the person whose name appears thereon, shall not be accepted by the ginner nor shall a ginner accept a detached portion of a cotton tax-exemption certificate except in cases where seed cotton has been sold by the producer and the detached portion presented has on the reverse side thereof or paper attached thereto the following statement signed by the producer: "To cover ------ pounds of seed cotton sold to ---------- by ----------
(Name of purchaser) (Signature of producer.)"

Any cotton tax-exemption certificates acquired by a ginner in any manner other than that prescribed above will not be accepted by the collector of internal revenue as evidence of exemption from tax.

(b) The ginning of cotton harvested prior to June 1, 1934, is exempt from the tax. To be entitled to such exemption, the ginner shall procure an affidavit from the person who owns the cotton at the time of ginning. The affidavit shall be executed on G. T. Form 106–B, revised, and shall show (1) the name and address of the owner of the cotton, together with the name and address of the producer, if they are different persons, (2) the location of the farm on which the cotton was harvested, (3) the year in which the cotton was harvested, (4) the location of the building where the seed cotton has been stored, (5) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (6) that a bale tag has been attached to each bale.

(c) The ginning of cotton harvested by a publicly owned experimental station or agri-

cultural laboratory is exempt from the tax. To be entitled to such exemption, the ginner shall procure an affidavit signed by a responsible executive officer of such station or laboratory. The affidavit shall be executed on G. T. Form 106–C, revised, and shall show (1) the name and address of such station or laboratory, (2) the location of the land on which the cotton was harvested, (3) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (4) that a bale tag has been attached to each bale.

(d) The ginning of cotton having a staple of 1½ inches in length or longer is exempt from the tax. To be entitled to this exemption, the ginner and the person who owns the cotton at the time of ginning, shall each execute an affidavit on G. T. Form 106–D, revised, which shall state: (1) The location of the farm on which the cotton was produced, (2) the date the cotton was ginned, (3) that the cotton has a staple 1½ inches in length or longer, (4) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (5) that a bale tag has been attached to each bale.

(e) There must be filed with each return on which exemption from tax is claimed under (a), (b), (c), or (d), above, the required affidavit or affidavits, certificate or certificates, as the case may be.

ART. 11. *Returns of ginners.*—Every ginner shall make a return, in duplicate, of all cotton ginned during each calendar month. A separate return, in duplicate, shall be made for each plant where cotton is ginned. The return shall show with respect to each bale or other quantity of cotton ginned during the month the same data required to

be kept in the ginner's record as provided in article 10, and shall account for every bale tag, for every certificate of tagging on G. T. Form 104, revised, and for every lien card on G. T. Form 105, revised, issued to the ginner by the collector as provided in articles 20 and 13. The return on G. T. Form 103, revised, which may be obtained from any collector, shall be filled out in accordance with the instructions contained thereon and in accordance with these regulations. Both the original and the duplicate shall be signed and sworn to before an officer authorized to administer oaths, by the ginner, if an individual, or, in other cases, by an executive officer of the concern. The return (including both original and duplicate) properly filled out, signed, and sworn to shall be filed with the collector for the district within which the place of ginning is situated. The original return shall have securely attached thereto each cotton tax-exemption certificate surrendered by the producer with respect to cotton ginned during the month, and all affidavits required by articles 9 and 13, and together with the duplicate return shall be filed on or before the last day of the month following the month for which the return is made. The ginner shall tender with his return to the collector a remittance to cover the amount of tax due on the ginning of all cotton during the month other than that with respect to which exemption certificates are surrendered, or affidavits are filed.

If the last day of the month on which the return is due falls on Sunday or a legal holiday, the return may be filed on the next following business day.

A return must be filed with the collector for each month whether or not tax liability has been incurred for that month.

If a ginner ceases business, his last return must be marked "final return."

ART. 12. *Payment of ginning tax.*—The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return.

ART. 13. *Postponement of time of payment.*—(a) If a producer intends to store lint cotton resulting from a ginning of cotton produced by him, either on his farm or at such other place as provided for in (b), below, the tax shall not be collected upon the ginning of such cotton, but payment may be postponed until the time fixed for the producer to file his return covering such cotton. (See article 21.) Until such return is filed and the tax is paid or exemption certificates covering the cotton are surrendered, the cotton in such bales shall be subject to a lien in favor of the United States for the amount of tax payable with respect to the ginning of such cotton. This lien shall be prior to all other liens, claims, or demands of any nature whatsoever.

The ginner who gins such cotton shall obtain from the producer an affidavit, executed in triplicate, on G. T. Form 106–A, revised, showing (1) the ginner's name, (2) the name and address of the producer, (3) the place where the cotton was produced, (4) the date on which the cotton was ginned, (5) the place where the lint cotton is to be stored, (6) the number of bales of lint cotton and the weight of lint cotton contained in each bale, and (7) the serial number of

the lien card attached to each bale. One copy of this affidavit shall be attached to the return filed for the month within which the ginning was done, one copy shall be retained by the ginner, and the third copy shall be retained by the producer.

The ginner shall attach to each such bale of lint cotton a lien card on G. T. Form 105, revised, bearing a serial number, which shall be filled out in accordance with the instructions contained thereon. This card shall show the time of ginning, the weight of lint cotton contained in the bale, and the amount of tax due. The lien card will contain a statement to the effect (1) that the cotton is subject to a lien in favor of the United States for the amount of tax payable with respect to the ginning of such cotton, and (2) that any person who transports (except to the place of storage), sells, purchases, or opens this bale of cotton before a bale tag issued under the Act is attached thereto is liable to a fine not exceeding $1,000, or to imprisonment for not exceeding six months, or both. Such lien card shall not be removed from the bale until a bale tag has been procured and attached thereto. Lien cards may be obtained from any collector. For provisions relating to filing of returns by producers and payment of tax, see article 21.

(b) *Conditions under which untagged cotton may be stored elsewhere than on the farm on which produced.*—In any case where the producer of lint cotton harvested and ginned after May 31, 1934, desires to store one or more bales of such cotton elsewhere than on the farm on which it was produced, without at the time of ginning procuring bale tags therefor, and he has at such time no tax-exemption certificate with which to procure

bale tags, he may store such cotton subject to the following conditions:

(1) Such cotton may be stored only in an approved warehouse (see article 2 (q)) located either within or without the county and state in which the cotton was produced;

(2) All such cotton of a producer shall be stored in one approved warehouse selected by the producer;

(3) The requirements of (a) above shall be fully complied with by the producer and the ginner who ginned such cotton;

(4) Both the affidavit and the lien card required by paragraph (a) above shall show the name and location of the warehouse in which the cotton is to be stored;

(5) No bale so stored shall be sold or removed from such approved warehouse for any purpose until a bale tag has been attached to such bale; and

(6) All bales so stored shall be segregated in such warehouse from all bales to which tags are attached.

ART. 16. *Transportation, purchase, or sale of lint cotton.*—No person shall transport or cause to be transported after July 1, 1934, any lint cotton to which a bale tag issued under the Act is not attached except (a) within the boundaries of the county where produced; (b) for the purpose of storage by the producer, in accordance with article 13; (c) a bale imported and held in customs custody or control (see article 22); (d) for export if the bale tags have been removed as provided in article 30; (e) in the form of bona fide samples in small containers; (f) after it has been put in process.

No person shall purchase or sell a bale of lint cotton unless there is attached thereto a bale tag issued under the Act, and unless the seller of the cotton delivers to the pur-

chaser at the time of the sale a certificate of tagging, G. T. Form 104, revised; provided, however, that warehouse receipts for bales of lint cotton harvested and ginned prior to June 1, 1934, and stored in a warehouse on August 1, 1934, may be purchased and sold if the warehouseman has executed the bond required by the regulations of the Secretary of Agriculture (R. 21, B. A. R. Series No. 1) and has in his possession bale tags and certificates of tagging for the cotton represented by the warehouse receipt or receipts. A bale tag shall be attached to, and a certificate of tagging issued for, each such bale of cotton before it is removed from the warehouse.

No person shall open or break a bale of lint cotton that does not have attached thereto a bale tag issued under the Act, and for which the owner does not have in his possession a certificate of tagging, unless such lint cotton was, on July 1, 1934, held by the owner on the premises where the cotton is to be processed, and the bale is opened on such premises.

For provisions relating to penalties, see article 37.

ART. 21. *Returns of producers.*—Every producer who has had cotton returned to be stored by him in accordance with the provisions contained in article 13 shall, at least 15 days prior to transporting, selling, or opening any bale of such cotton, file a return on G. T. Form 107, revised.

The return (including both original and duplicate), properly filled out, signed, and sworn to, shall be filed with the collector of internal revenue for the district in which the cotton was ginned. The return shall state the place where the cotton is stored, the number of bales of cotton for which bale

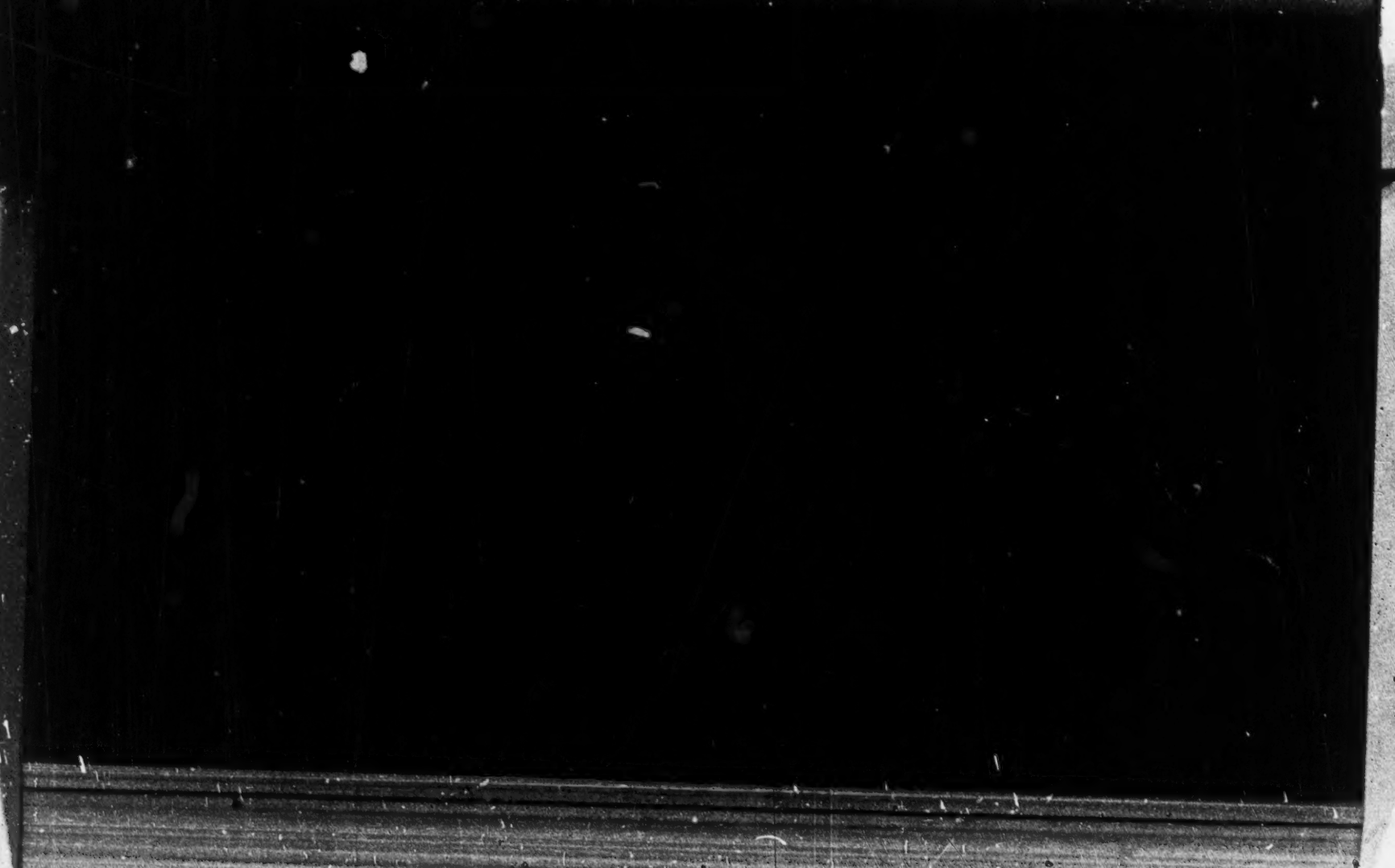
tags are desired, and the total weight of lint cotton contained in each bale. There shall accompany the return that duplicate copy of the producer's affidavit which was retained by such producer at the time the cotton was ginned. (See article 13.)

If the producer desires bale tags for only a portion of the cotton covered by such affidavit, the return shall cover only such portion, and the collector shall make proper notation on the affidavit and return it to the producer. The affidavit shall be forwarded to the collector each time a return is filed with respect to any part of the cotton covered by such affidavit. When a return or returns have been filed for the total quantity of cotton covered by such affidavit, the collector shall retain the affidavit.

At the time of filing the return, the producer may surrender exemption certificates covering any part of the cotton covered by the return, and shall pay the tax on any part of such cotton not covered by such exemption certificates. Bale tags will thereupon be issued to such producer to identify the bales of lint cotton covered in the return. Each tag when received should be attached to the bale of lint cotton for which it is issued. At the time such bale tags are issued to the producer, certificates of tagging, one for each bale tag, shall be issued by the collector to the producer, who shall be notified by the collector that without such certificate and tag the bale of lint cotton can not be sold or broken or opened. (See article 16.)

The collector shall keep an accurate record of bale tags and certificates of tagging issued under this article, together with the serial numbers of such certificates.

U. S. GOVERNMENT PRINTING OFFICE: 1934



INDEX

CITATIONS

Cases—Continued.

Statutes:

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 12

D. F. STAHMANN, ANNA M. STAHMANN, AND JOYCE F. STAHMANN, DOING BUSINESS AS STAHMANN FARMS COMPANY, PETITIONERS

v.

S. P. VIDAL, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEW MEXICO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 26-30) is reported at 93 F. (2d) 902. The findings of fact and conclusions of law entered by the District Court are printed in the record at pages 14-16.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 27, 1937 (R. 30). A peti-

tion for rehearing was filed January 25, 1938, and was denied by the Circuit Court of Appeals on February 5, 1938 (R. 30). The petition for certiorari was filed March 16, 1938, and was granted April 25, 1938 (R. 32). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The writ of certiorari was limited to the question whether the petitioners, producers of cotton who paid the tax imposed by the Bankhead Cotton Act upon the ginner who ginned cotton grown by the petitioners, can maintain this action for recovery of the tax.

STATUTES AND OTHER AUTHORITIES INVOLVED

The pertinent statutes and other authorities involved are printed in the Appendix, *infra*, pp. 30–55.

STATEMENT

This action was instituted by the petitioners in the United States District Court for the District of New Mexico to recover the sum of $13,064.52 paid to the respondent under authority of the Bankhead Cotton Act, c. 157, 48 Stat. 598, *infra*. The action was based upon the alleged unconstitutionality of that Act. (R. 1–3.)

The respondent, in an amended answer, denied that the Act was unconstitutional and affirmatively alleged as a further defense that the petitioners

were not liable under the statute to pay the amount sued for; that if they paid to the respondent the amount sued for they did so in discharge of a liability imposed upon a person or persons other than the petitioners; and that, therefore, the petitioners were not entitled to maintain the action for recovery of the amount paid (R. 5–6).

A jury trial was waived in writing (R. 4) and the cause submitted to the court for decision upon a written stipulation of facts (R. 6–9) which was approved by the court (R. 9). A request for special findings of fact and conclusions, and a motion for judgment, were filed by the respondent (R. 10–14) and were denied by the court (R. 14). The respondent duly excepted (R. 16, 24). Upon consideration the court made findings of fact and conclusions of law in favor of the petitioners (R. 14–16) and entered judgment for the petitioners on January 30, 1937 (R. 16).

Upon appeal to the Circuit Court of Appeals for the Tenth Circuit that court, basing its decision upon the affirmative defense pleaded by the respondent, held that the tax imposed by the Bankhead Cotton Act, *infra*, was a tax imposed upon the ginning of cotton; that the ginner was made liable for the tax; that these petitioners, not being liable for the tax in question, made payment as volunteers, and that they therefore were not entitled to maintain this action for recovery. In view of its decision on this question, the court re-

frained from passing upon the alleged unconstitutionality of the Bankhead Cotton Act. (R. 26-30).

The facts alleged in the complaint and admitted in the respondent's amended answer, supplemented by the written stipulation of facts filed by the parties, are briefly as follows:

During the crop year 1934–1935 the petitioners were engaged in Dona Ana County, New Mexico, in the growing of cotton, and were and had been for many years prior thereto cultivating in excess of 2,000 acres of land. During that crop year they produced a quantity of cotton in excess of the allotment for which, under the terms of the Bankhead Cotton Act, they were entitled to obtain tax exemption certificates. The petitioners delivered this cotton to the Santo Tomas Gin Company of Mesquite, New Mexico, to be ginned. The Santo Tomas Gin Company ginned the petitioners' cotton and filed monthly returns with the respondent for the months of October, November, and December 1934 as the ginner of petitioners' cotton. The returns thus filed showed a tax due in the amount of $13,064.52. Of this amount the sum of $11,193.99 was assessed against the Santo Tomas Gin Company in December 1934, and was paid to the respondent by checks drawn by Stahmann Farms (the petitioners) payable to the Collector of Internal Revenue. These checks were dated November 27, 1934, November 28, 1934, and December 13, 1934, and were for the respective amounts of $9,131.44, $1,550.23,

and $512.32. The sum of $1,870.53 was assessed against the Santo Tomas Gin Company in January 1935 and was paid to the respondent by a check for that amount drawn by Stahmann Farms (the petitioners) payable to the Collector of Internal Revenue and bearing the date January 19, 1935. (R. 1, 2, 5–9.)

The Santo Tomas Gin Company declined to deliver the ginned cotton to the petitioners until the above assessments against it were paid. The respondent applied these payments by petitioners against the assessments outstanding on its books under the name of Santo Tomas Gin Company, Mesquite, New Mexico. (R. 7–8.)

On March 6, 1935, the petitioners filed a claim for refund of $13,064.52 with the Collector of Internal Revenue for the District of New Mexico, their claim being based upon the alleged unconstitutionality of the Bankhead Cotton Act. The Commissioner of Internal Revenue rejected this claim on August 22, 1935 (R. 8). This suit followed.

SUMMARY OF ARGUMENT

I

Section 4 (a) of the Bankhead Cotton Act imposed a tax on the ginning of cotton; Section 4 (c) provided that every person ginning cotton subject to tax under the Act should make monthly returns to the Collector of Internal Revenue, the tax to be

due and payable to the Collector at the time fixed for filing the return. There can be no dispute that the Act in terms designates the ginner as the taxpayer. Even though the tax be fixed with reference to the situation of the producer, and even though it was expected that the burden of the tax would be passed on to the producer, the ginner remains the one upon whom it was imposed and from whom it was to be collected. The fact that the ginner refused to deliver the cotton to the petitioners until its tax was paid, even if this amounted to legal duress, was compulsion proceeding from the ginner and not from the respondent Collector. Whether or not the ginner reimbursed itself from its customers, and whether or not this reimbursement arose through coercion, are matters of indifference to the Collector. Similarly, the fact that the ginner made payment through a check drawn by petitioners in no manner serves to make them the taxpayer. The tax was imposed upon and collected from the ginner, irrespective of the private arrangements for payment which he chose or was able to make with those from whom the Government sought no tax.

The provisions (Secs. 14 (a) and 20) for the refund of sums illegally collected under the Bankhead Cotton Act contemplate that only the taxpayer is empowered to take advantage of the remedy. The authorities seem uniformly to refuse to countenance so anomalous a situation as a system of revenue ad-

ministration by which persons other than the taxpayer could recover taxes illegally collected. Indeed, when attention turns to the common law roots of the Collector's liability, it is plain that he can not be subjected to a personal liability to a person from whom he has not compelled payment of the tax. *Elliott* v. *Swartwout*, 10 Pet. 137. The present statutory remedy against the Collector does not embrace any liability beyond that found in the common law action. *Lowe Bros. Co.* v. *United States*, 304 U. S. 302.

Petitioners rely upon decisions entered in certain exceptional cases, such as instances where the Collector has demanded payment of one not a taxpayer under the Act, or when the liability discharged was thought to be that of the one who made the payment. These cases plainly are inapplicable here.

The administration of the revenue laws would necessarily be disrupted if the Treasury were forced to accept arrangements independently made between private persons, and be held accountable for tax collections by one upon whom the tax was neither imposed nor from whom it was collected. The dangers latent in such a decision are illustrated by the fact that, at the time this suit was filed and decided below, there was no assurance that the Government would not be faced with suits for recovery of a tax both by the producer and by the ginner. A ginner would not seem to be estopped by any recov-

ery of the producer, and as the person upon whom the tax was imposed and from whom it was collected, the ginner would appear to have a much better standing to sue for recovery than would the producer. The possible defense that he had not borne the burden of the tax would not, in the absence of statutory sanction, be certain to be successful. Even though the burden of the tax was borne by petitioners, the fact remains that the tax was laid upon the ginner and on him alone. *Lash's Products Co.* v. *United States*, 278 U. S. 175. And, so far as the broader equities are material, it may be noted that petitioners received the benefit of higher prices obtained through crop reductions by their competitors.

II

The Second Deficiency Appropriation Act of 1938, approved June 25, 1938, in keeping with the consistent effort of Congress to remedy the maladjustments caused by the invalidation of taxes collected under the Agricultural Adjustment Act and the repeal of related acts, authorizes refund of amounts collected as a tax under the Bankhead Cotton Act. The refund is to be made either to the ginner of the cotton or to the owner of the cotton, according as it is shown that the claimant bore the burden of the tax. The Act thus makes provision for payment to petitioners of everything which they seek to recover in this suit, except their claims

for interest on the amounts paid as taxes, and thus eliminates any equitable argument which petitioners might have.

In addition, the Act makes quite plain the understanding of Congress that only those persons upon whom the tax is imposed and from whom it is collected have the right to bring suit for its recovery. In making the exceptional provision that the owner of the cotton might recover the tax imposed upon the ginner, if he showed that the burden of the tax was borne by him, Congress directed that for such purposes "the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners." If Congress thought it necessary to enact a retroactive fiction to cover such a situation, it seems quite plain that without this provision the producer has no standing to assert claims which can be brought forward only by the taxpayer.

ARGUMENT

I

PETITIONERS, WHO PAID THE TAX LIABILITY OF ANOTHER, CANNOT MAINTAIN THIS ACTION TO RECOVER

A. THE GINNER WAS THE TAXPAYER

There seems little room for doubt that under the Bankhead Cotton Act, *infra*, the tax was imposed on and collected from the ginner, and the ginner alone.

Section 4 (a) of the Bankhead Cotton Act imposed a tax "on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect." Section 4 (c) provided that "Every person ginning any cotton subject to tax under this Act (whether as agent of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done." It further provided that the tax shall, without assessment or notice, "be due and payable to the collector at the time so fixed for filing the return." The Commissioner's regulations were in accordance with these provisions. See Treasury Regulations 84 (1935 Edition), Articles 7, 8, 11, and 12, *infra*.[1]

There is no dispute that the Act in terms designates the ginner as the taxpayer. Petitioners, however, argue (Br. 16–18) that the imposition of, and exemptions from, the tax are fixed by matters

[1] The only exception to these provisions, and which is not applicable under the facts of this case, is contained in Section 4 (f), which provides that the tax shall not be collected upon the ginning of cotton which is to be stored by the producer either upon his farm or at some other place permitted by regulation. In such cases the payment of tax is postponed, the cotton being subjected to a lien, until bale tags are obtained, either by payment of the tax or by surrender of tax exemption certificates. See Articles 13 and 21 of Regulations 84 (1935 Edition), *infra*, covering returns by the ginner and producer and the payment of tax in such cases.

relating to the producer and not to the ginner, and that Congress plainly contemplated that the producer should bear the burden of the tax. This may be conceded. But it advances petitioners' case only to the point that the tax was imposed on the ginner with reference to the cotton ginned for a particular producer. The indisputable fact remains that the Act names the ginner as the taxpayer, that he is required to file the returns, and that the tax is assessed against him. It would be idle to contend that Congress did not expect the burden of the tax to be passed on to the ginner's customers; it would be equally idle to contend that the ginner was not the taxpayer named in the Act.

2. The question at this juncture thus reduces itself to whether anything in the transaction between the petitioners and the Santo Tomas Gin Company operated, or could operate, to make the petitioners the taxpayer under the Act.

The facts may briefly be restated: Petitioners produced cotton in excess of their allotment under the Bankhead Cotton Act. The Santo Tomas Gin Company ginned the excess cotton and filed returns with the respondent as the ginner of this cotton. The tax due under the Act was assessed against the Gin Company. The Gin Company refused to deliver the ginned cotton to petitioners until the assessments were paid. Petitioners drew checks for the assessed tax payable to respondent, who credited the amounts against the account of the Gin Company. (R. 1, 2, 5–9.)

Petitioners' claim to the status of a taxpayer thus rests on only two circumstances: (a) the Gin Company refused to deliver the cotton until its tax was paid; and (b) the check received by the respondent was drawn by petitioners. These factors cannot make petitioners the taxpayer under the Act.

a. Petitioners' argument proceeds largely upon the assumption that the tax involved was paid under compulsion and duress (Br. 15–16, 18). It is unnecessary to enter into the treacherous field fixing the nature of actionable duress and thus to determine whether withholding the ginned cotton, presumably with notice of the contemplated withholding before petitioners delivered it to the Gin Company, constitute duress. Whether or not this amounts to legal duress, the action was that of the Gin Company and not that of the respondent Collector. His concern began and ended with the payment of the tax imposed on the Gin Company. That taxpayer could meet the assessed tax out of its own pocket; it could increase its ginning charges by the amount of the tax, or even more; it could have the producer pay the tax on its behalf; or it could even prevail upon a kindly by-stander to pay the amount of the tax. These arrangements were a matter of indifference to the Collector; they concerned only the Gin Company and its customers. If there were duress in the ginning transaction, it was the duress of the Gin Company alone. The Collector did not participate in it and had no inter-

ct in its outcome. So far, therefore, as the Government was concerned, there was nothing in the supposed duress to which petitioners were subjected which served to make them taxpayers under the Act.

b. No more does the fact that the petitioners drew the check received by the respondent Collector serve to make them taxpayers under the Act. The tax was assessed against the Gin Company and the payment was credited to its account. Whether paid by cash, by a check drawn by the Gin Company, or by one who was a stranger to the Collector, was again a matter of indifference to the Collector. Whatever the private arrangements between the taxpayer and petitioners, they were mere volunteers so far as the Collector was concerned. Obviously, the husband whose check also covers his wife's income tax, or the corporation which pays the income tax of its employee, does not step into the shoes of the beneficiary of the payment and thus become the taxpayer. Whether the payment is the result of commercial or domestic coercion, a gift, or a loan, the Collector knows only that the tax has been paid by a volunteer. The taxpayer is still the one on whom the tax is imposed and to whose account it is credited.

It thus seems clear that under the Bankhead Cotton Act the ginner is the taxpayer and that no arrangement made between the ginner and the producer, of which the Collector knows nothing and as

to which he is indifferent, can serve to convert the producer into a taxpayer in the place of the ginner.

B. ONLY THE TAXPAYER CAN RECOVER THE TAX

1. The claim of the Gin Company has not and cannot be assigned to the petitioners. See Revised Statutes, Section 3477 (U. S. C., Title 31, Section 203); *United States* v. *Gillis*, 95 U. S. 407; *Ball* v. *Halsell*, 161 U. S. 72. Certainly, the petitioners should not be allowed to recover on an unassigned claim of the ginner when its specific assignment is forbidden.

2. With respect to the recovery of sums collected as tax under the Bankhead Cotton Act, Section 14 (a), *infra*, made applicable to such sums all provisions of law, including penalties, applicable with respect to taxes imposed by Section 800 of the Revenue Act of 1926, in so far as applicable. This seems to have been statutory recognition of the applicability of Section 3220 of the Revised Statutes,[2] *infra*, authorizing the Commissioner to credit or refund all taxes erroneously or illegally collected. Section 20 of the Bankhead Act authorized the filing of refund claims and the maintenance of suits to recover where refund was denied by the Commissioner.

These sections, naturally enough, contemplate that only taxpayers can have the benefit of their

[2] As amended by Section 1111 of the Revenue Act of 1926, c. 27, 44 Stat. 9, and Section 619 (b) of the Revenue Act of 1928, c. 852, 45 Stat. 791.

provisions. A system of revenue administration by which persons other than the taxpayer could recover taxes illegally collected would be an anomaly. It is plain that the authorities countenance no such unsatisfactory situation.

In a number of cases one corporation has voluntarily paid the tax of another, either a subsidiary or a predecessor, and the courts have refused to permit the volunteer to recover the tax, even though it could not legally have been collected from the taxpayer. *Ohio Locomotive Crane Co.* v. *Denman*, 73 F. (2d) 408 (C. C. A. 6th), certiorari denied, 294 U. S. 712; *Mahoning Inv. Co.* v. *United States*, 3 F. Supp. 622 (C. Cls.), certiorari denied, 291 U. S. 675; *Central Aguirre Sugar Co.* v. *United States*, 2 F. Supp. 538 (C. Cls.); *Wilson & Co.* v. *United States*, 15 F. Supp. 332 (C. Cls.); *Combined Industries, Inc.* v. *United States*, 15 F. Supp. 349 (C. Cls.). Similar results have been reached in other comparable situations. In *Wourdack* v. *Becker*, 55 F. (2d) 840 (C. C. A. 8th), certiorari denied, 286 U. S. 548, a former president of two dissolved corporations was denied recovery of additional taxes assessed against the corporations and voluntarily paid by him. In *Daube* v. *United States*, 59 F. (2d) 842 (C. Cls.), affirmed on another issue, 289 U. S. 367, the plaintiff had been allowed an over-assessment of a certain sum which he directed the Commissioner to credit against taxes due from a partnership of which he was a member. The Court of

Claims held that he could not recover the amount applied against the partnership tax although the credit was made after the period for collecting from the partnership had expired. In granting certiorari this Court limited its review to another question in the case, 288 U. S. 597. In *Clift & Goodrich* v. *United States*, 56 F. (2d) 751 (C. C. A. 2d), certiorari denied, 287 U. S. 617, a corporation organized in 1919 to take over the assets and business of a partnership voluntarily paid a tax which should have been paid for the partners for 1918 and the court denied recovery.

3. Petitioners bring this suit against the respondent as Collector. The action derives from the common law proceeding in assumpsit, when the Collector's liability was grounded on his voluntary payment of the taxes into the Treasury over the protest of the taxpayer. *Elliott* v. *Swartwout*, 10 Pet. 137. When Congress in 1839 provided that all taxes should be paid into the Treasury irrespective of protest, and provided for the refund of illegal taxes by the Secretary of the Treasury (c. 82, 5 Stat. 339), the common law basis of the action was removed. *Cary* v. *Curtis*, 3 How. 236; *Curtis's Administratrix* v. *Fiedler*, 2 Black 461, 478. The action has been revived by statute, as a convenient means of administering the revenue, and is now in essence a suit against the United States.[4] But the

[4] See Act of February 26, 1845, c. 22, 5 Stat. 727; *Nichols* v. *United States*, 7 Wall. 122, 126–127; *Barney* v. *Watson*,

tion retains the procedural consequences of a personal action and is available only in circumstances presenting some analogy to the common law action to recover taxes paid under protest. See *Patton v. Brady*, 184 U. S. 608, 612–615; *Smietanka* v. *Indiana Steel Co.*, 257 U. S. 1; *Sage* v. *United States*, 250 U. S. 33, 37; *Bankers Pocahontas Coal Co.* v. *Burnet*, 287 U. S. 308, 312; *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 430–431.

Accordingly, in *Lowe Bros. Co.* v. *United States*, 301 U. S. 302, this Court held that the action of the Commissioner in collecting a tax by credit would not ground suit against the Collector. It said (p. 305):

> Since the suit allowed against the collector * * * was based on his personal liability, *Sage* v. *United States*, 250 U. S. 33; *Smietanka* v. *Indiana Steel Co.*, *supra*, no such suit will lie unless he has collected the tax.

These principles make it plain that the Collector is liable only for his own act in collecting the tax. He collected the tax only from Gin Company; his threats of distraint were directed against the Gin Company alone; the liability which was discharged

---

U. S. 449, 452; *Arnson* v. *Murphy*, 109 U. S. 238, 240, 243; *Aufmordt* v. *Hedden*, 137 U. S. 310, 329; *Schoenfeld* v. *Hendricks*, 152 U. S. 691, 693; *Philadelphia* v. *Collector*, 5 Wall. 720, 731–735; *The Collector* v. *Hubbard*, 12 Wall. 1, 13–14; *Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 382–383. See also *Ex parte Bakelite Corp.*, 279 U. S. 438, 451; *Crowell* v. *Benson*, 285 U. S. 22, 50–51.

was only that of the Gin Company. If the collection were unlawful, the Collector's liability ran only to the taxpayer; no act or threat of his compelled petitioners to make payment. Since "no statute has enlarged the collector's common law liability to suit" (*Lowe Bros. Co.* v. *United States, supra,* 306), and since compulsory collection by the defendant is a necessary basis of the common law action (*Elliott* v. *Swartwout, supra,* 152–157), it is plain that petitioners cannot maintain this suit to recover money voluntarily paid the respondent without any demand, coercion, or even request from respondent.

C. THE EXCEPTIONAL SITUATIONS, RELIED ON BY PETITIONERS, ARE INAPPLICABLE

Respondent does not differ with petitioners in their statement (Br. 25) that innumerable cases have been decided since 1924 wherein refund has been allowed of taxes voluntarily paid, "and which were thought to be due *from the tax payer* at the time he made the payment." [Italics added.] But this statement emphasizes the inapplicability of the cases relied upon by the petitioners (Br. 26–27).

The authorities cited by petitioners consist of one group, including *United States* v. *Jefferson Electric Co.,* 291 U. S. 386, and *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337 (Br. 26); *Moore Ice Cream Co.* v. *Rose,* 289 U. S. 373 (Br. 29); *Jenkins* v. *Smith,* 21 F. Supp. 433 (D. Conn.) (Br. 30); *Weir* v. *McGrath,* 52 F. (2d) 201 (S. D. Ohio), affirmed, 41 F.

(2d) 1021 (C. C. A. 6th) (Br. 31); and *Austin Nat. Bank* v. *Sheppard*, 71 S. W. (2d) 242 (Br. 32), which present no question with respect to payment by the claimant of an amount representing the tax liability of a third party. Each is a suit by the party primarily liable under the statute for the tax paid, each of which paid the amount involved, and each of which sued in its capacity as taxpayer under the statute. Each case involved the question whether all or a part of the amount paid by the claimant as its liability under the statute had been erroneously or illegally collected. Clearly these cases have no application to the facts involved in the instant case.

The authorities cited also include another group, consisting of *White* v. *Hopkins*, 51 F. (2d) 159 (C. C. A. 5th) (Br. 26), *Dorrance* v. *Phillips*, 85 F. (2d) 660 (C. C. A. 3d), and *United States* v. *S. F. Scott & Sons*, 69 F. (2d) 728 (C. C. A. 1st) (Br. 30), involving to some extent the question whether the amount sued for had been voluntarily paid to discharge the tax liability of the true taxpayer. This group of cases differs from the instant case in a very essential element. In each case either demand was made by the Collector upon the claimant as the party liable under the statute and payment was made under duress, as in the case of *White* v. *Hopkins, supra*, or the tax was paid by the claimant not to discharge the liability of another but to discharge a liability assumed to be its own liability

under the statute, as in *Dorrance* v. *Phillips*, supra, and *United States* v. *S. F. Scott & Sons*, supra. Compare *American Newspapers* v. *United States*, 20 F. Supp. 385 (S. D. N. Y.). *United States* v. *Arnold*, 89 F. (2d) 246 (C. C. A. 3d), cited at page 29 of the brief, presents a question similar to that decided by this Court in *Stone* v. *White*, 301 U. S. 532, and is probably overruled by the latter decision. This second group of cases clearly are distinguishable from the instant case where no claim was asserted by the respondent Collector against petitioners and payment was not mistakenly made to discharge any assumed liability on their part.

Standard Oil Co. v. *Bollinger*, 348 Ill. 82, and *Benzoline Motor Fuel Co.* v. *Bollinger*, 353 Ill. 600, cited by petitioners (Br. 34), were suits brought by gasoline dealers to recover taxes on sales of gasoline which had been collected by the State of Illinois under an unconstitutional statute. Recovery was denied in the *Standard Oil Company* case because the company had collected the tax directly from its customers and therefore had suffered no injury. That case might suggest a possible defense if the present suit had been brought by Santo Tomas Gin Company. But it certainly does not hold that the purchasers in that case, or the petitioners under circumstances involved here, could recover. In the *Benzoline Motor Fuel Company* case recovery was allowed because the company had previously contracted with its customers to repay

the tax to them if the Act were held invalid. The court held that the company was the proper party to sue on behalf of its customers. Under similar circumstances the Santo Tomas Gin Company might have successfully prosecuted this action for the benefit of petitioners, but the case is not authority for the maintenance of this action by petitioners.

D. A PROPER ADMINISTRATION OF THE REVENUE LAWS REQUIRES THAT PETITIONERS BE DENIED RECOVERY.

1. The administration of the revenue laws has roots which go back to the beginning of our nation. In the course of its development there has emerged "a complete system of corrective justice in regard to all taxes imposed by the general government." *State Railroad Tax Cases*, 92 U. S. 575, 613. This system of corrective justice has been bottomed upon the assumption that the Government, in collecting illegal taxes, is answerable only to the taxpayer.

The Treasury Department receives returns from the taxpayer. Its assessments are directed only to the taxpayer. Payments are credited to the account of the taxpayer. Administrative processes would necessarily be disrupted if the Commissioner were to be faced with a demand for the repayment of taxes by one against whom he had made no assessment, and if the Collector were to be held liable for the recovery of taxes by one from

whom he had not collected. Orderly government requires that the Treasury not be forced to accept arrangements independently made between private persons, or be held accountable for tax collections by one from whom the tax was not collected.

2. The dangerous implications of such a rule are illustrated by the fact that, at the time this suit was filed and when it was decided by the court below, there was no assurance that the Government might not be faced with two suits for recovery of a single tax, and no assurance that—if the producer were allowed to recover—the ginner might not also recover the amount of the same tax.

The ginner is not a party to the suit of the producer and would not seem to be bound or estopped by any recovery of the producer. If a timely claim for refund had been filed by the ginner as well as the producer, there would thus have been a serious danger that the ginner as well as the producer could recover.

In several recent cases the Government has sought to defend against recovery by the club or ticket seller of taxes paid on dues or admissions on the ground that in reality the suit was brought not by the taxpayer but by a mere collecting agency. Almost without exception, however, the courts have rejected this contention. Two of the leading cases on this point are *Builders' Club of Chicago* v. *United States,* 14 F. Supp. 1020 (C. Cls.), and *Alliance Country Club* v. *United States,* 62 C. Cls.

509. In both of these cases the money used to pay the taxes was furnished by individual members of the clubs. The clubs, however, were required by statute to collect the money and turn it over to the Collector of Internal Revenue. The Government therefore argued, as the petitioners argue here, that the taxes had actually been paid by individual members of the respective organizations and the clubs could not maintain an action for a refund without express authorization of their members. The court held, however, that the persons made liable by the Act to pay over to the Collector the taxes imposed were the real taxpayers. And in *United States* v. *Johnston*, 268 U. S. 220, 227, it was held that the collecting agent for admissions tax could not be indicted for embezzlement because it "does not look as if the Government were dealing with these people otherwise than with others answerable for a tax." Whatever the soundness of the club dues cases,[4] it is to be noted that, unlike them, suit by a ginner to recover taxes paid under the Bankhead Cotton Act could not be defended upon the ground that the ginner had no personal liability and was merely a tax collector. Therefore the reasoning which permitted the clubs to recover merely because they were required to account for the money collected from members would apply *a fortiori* to a ginner.

[4] Compare *Allen* v. *Regents*, 304 U. S. 439, where the Court seems to imply that the collecting agent is not entitled to maintain a suit for refund. But the present statute clearly does not treat the ginner as a mere collecting agent.

While the Government might have a valid defense to a suit by the ginner, based upon the fact that the burden of the tax was shifted, it is not settled that recovery will be denied in the absence of a statute requiring proof that the burden of the tax has not been passed on. Compare *United States* v. *Jefferson Electric Co.*, 291 U. S. 386; *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337; *Southern Pac. Co.* v. *Darnell-Taenzer Co.*, 245 U. S. 531. Petitioners are therefore not in a position to assert with any confidence that they alone are entitled to recover.

The Government plainly should not be required to litigate at its peril its liability both to the ginner and to its customer whom the ginner has induced to discharge its tax liability. Only by confining to the taxpayer the right to secure refund of illegal taxes can orderly administration of the revenue laws be preserved.

3. Petitioners assert (Br. 26) that they are entitled in justice and good conscience to the return of the tax because they bore the burden of it. This factor, at least where the amount of the tax was included as a separate item as seems the case here, would entitle them to recover from the Gin Company in the event of a refund to it. *Wayne County Produce Co.* v. *Duffy-Mott Co.*, 244 N. Y. 351; compare *Heckman & Co.* v. *Dawes & Son Co.*, 12 F. (2d) 154; *Casey Jones, Inc.* v. *Texas Textile Mills*, 87 F. (2d) 454; *Abe Cohen* v. *Swift & Co.*,

95 F. (2d) 131 (C. C. A. 7th), certiorari denied, No. 879, October Term, 1937. But whatever the extent to which the economic burden of the tax is shifted, "the tax is laid and remains on the manufacturer and on him alone." *Lash's Products Co.* v. *United States*, 278 U. S. 175, 176. There is, accordingly, nothing which would permit the petitioners to give themselves the standing of taxpayer and to hold the Government accountable for the result of transactions between them and the ginner.

So far as the broader equities are material, it may be noted that petitioners received the benefit of higher prices, obtained through crop reduction by their competitors, without reducing their own production. It may well be that they were fully compensated for the amount of the tax burden which they bore when they received the higher prices for their cotton.

II

CONGRESS HAS RECOGNIZED THE PRODUCERS' INCAPACITY TO RECOVER AND HAS PROVIDED RELIEF

Since the decision in *United States* v. *Butler*, 297 U. S. 1, Congress has attempted to remedy the maladjustments caused by invalidation of taxes collected under the Agricultural Adjustment Act and the repeal of related acts, one of which is the Bankhead Cotton Act. The Bankhead Cotton Act, the Kerr-Smith Tobacco Act (48 Stat. 1275), and

the Potato Act of 1935 (49 Stat. 782) were promptly repealed (c. 42, 49 Stat. 1106), and collection of unpaid taxes due under those Acts was prohibited (c. 112, 49 Stat. 1155). Provision was made in Title VII of the Revenue Act of 1936 (c. 690, 49 Stat. 1648) for refund of processing, floor stocks, and compensating taxes imposed under the Agricultural Adjustment Act, to the extent that the burden of such taxes had been borne by the taxpayers. Further provision was made in Title IV of the same Act for refunds to purchasers who held processed commodities on January 6, 1936, the date of the decision in the *Butler* case, which they had purchased at a price which included processing taxes. See *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337. At the same time, in order to do complete justice, Congress included Title III in the Revenue Act of 1936, which imposed a substantial tax upon processors and others who had successfully avoided payment of processing and other similar taxes.

In keeping with this policy of affording general equitable relief from taxes collected under the Agricultural Adjustment Act and related legislation Congress included a provision in the Second Deficiency Appropriation Act of 1938 (*infra*, p. 37), approved June 25, 1938, authorizing refund of amounts collected as tax under the Bankhead Cotton Act, the Kerr-Smith Tobacco Act, and the Potato Act of 1935. In so far as taxes collected under the Bankhead Cotton Act are concerned, it is clear that Congress fully appreciated the inequi-

this position in which growers of cotton are placed, and steps were taken to remedy that situation. The Act provides that in so far as taxes collected under the Bankhead Cotton Act are concerned "refund shall be allowed to the ginner of the cotton only to the extent that the ginner has not shifted the burden of the tax by including it in any charge or fee for ginning, or by collecting it from the owner or owners of the cotton ginned, or in any manner whatsoever," and that refund "shall be allowed to the owner or owners of the cotton at the time of ginning, to the extent that the amount of tax was shifted to such owner or owners by the cotton ginner and was not shifted by such owner or owners to other persons, and in such cases, but only for the purposes of this paragraph, the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners."

The Act is significant in two respects. In the first place, it removes the basis for petitioners' plea that equity and good conscience require that they recover in this action. The petitioners seem clearly to have borne the burden of the tax and thus to fall within the terms of the Act.[1] See Treasury

[1] The Treasury Department has so advised this Department, which then so advised counsel for petitioners, suggesting that they dismiss the petition in this case. Counsel replied that this action was considered inadvisable because there could be no recovery of interest under the Act of June 25, 1938.

Decision 4850, *infra*, published in the Internal Revenue Bulletin, August 15, 1938. Except for the recovery of interest upon the amounts paid in discharge of the ginner's taxes, upon which petitioners have no right to insist (*Smyth* v. *United States*, 302 U. S. 329, 353), they can have under the Act of June 25, 1938, all that they seek to recover here. Under the circumstances there are no equitable considerations which would justify limiting the settled rule that a volunteer cannot maintain a suit for refund, or accept petitioners' theory that they paid the amount involved under protest or duress.

In the second place, the Act makes plain the understanding of Congress that without this remedial legislation the producer would be unable to recover taxes collected from the ginner under the Bankhead Cotton Act. Its provisions for the refund to the producers are:

> * * * refund shall be allowed to the owner or owners of the cotton at the time of ginning, to the extent that the amount of tax was shifted to such owner or owners by the cotton ginner and was not shifted by such owner or owners to other persons, *and in such cases, but only for the purposes of this paragraph, the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners.* [Italics added.]

This shows not only that Congress considered remedial legislation necessary in order to provide for recovery by the producer, but that in providing

remedy it was considered necessary to provide that "the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners." Clearer evidence could not be had that Congress viewed its statutes as allowing recovery only by the taxpayer, and that, when this principle was departed from, it was to be done only by enacting a retroactive fiction that the tax was originally imposed on the producer.*

CONCLUSION

In view of the foregoing we respectfully submit that the decision below should be affirmed.

ROBERT H. JACKSON,
Solicitor General.
JAMES W. MORRIS,
Assistant Attorney General.
GOLDEN W. BELL,
Assistant Solicitor General.
SEWALL KEY,
F. E. YOUNGMAN,
Special Assistants to the Attorney General.
WARNER W. GARDNER,
Special Attorney.

OCTOBER 1938.

*The other possible effects of the Second Deficiency Appropriation Act upon this case, such as operating to prevent the complaint from stating a cause of action or perhaps to oust the courts of jurisdiction, are not included in the question to which the order granting the writ was limited and to which petitioners have devoted their brief. We assume, therefore, that any decision of reversal would result in a remand of the case for further proceedings.

APPENDIX

Bankhead Cotton Act, c. 157, 48 Stat. 598 (U. S. C., Title 7, c. 27):

* * * * *

TAX AND EXEMPTIONS

SEC. 4. (a) There is hereby levied and assessed on the ginning of cotton hereafter harvested during a crop year with respect to which this Act is in effect, a tax at the rate per pound of the lint cotton produced from ginning, of 50 per centum of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. If the cotton was harvested during a crop year with respect to which the tax is in effect, the tax shall apply even if the ginning occurs after the expiration of such crop year.

(b) The average central market price, per pound of lint cotton, shall be the average price per pound of basis seven-eighths-inch middling spot cotton on the ten spot cotton markets (designated by the Secretary of Agriculture) as determined and proclaimed from time to time by the Secretary of Agriculture. The average central market price determined and proclaimed shall be the base for determining the rate of the tax until a different average central market price for lint cotton is determined and proclaimed by the Secretary of Agriculture.

(c) Every person ginning any cotton subject to tax under this Act (whether as agent

of the owner or otherwise) and every other person liable for tax under this Act shall make monthly returns under oath in duplicate and pay the taxes imposed by this Act to the collector for the district in which the ginning is done, or to such other person as such collector may direct. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid.

(d) When the Secretary of Agriculture does not proclaim an allotment of cotton for a crop year as provided in section 3 of this Act, the tax shall not apply with respect to cotton harvested during such crop year but shall apply to cotton harvested during the next crop year for which, with the approval of the President, the Secretary makes an allotment under such section.

(e) No tax shall be imposed under this Act with respect to—

(1) Cotton harvested by any publicly owned experimental station or agricultural laboratory.

(2) An amount of cotton harvested in any crop year from each farm equal to its allotment.

(3) Cotton harvested prior to the crop year 1934–1935.

(4) Cotton having a staple of one and one half inches in length or longer.

(f) The tax shall not be collected upon the ginning of cotton which is to be stored by the producer thereof either on the farm or at such other place as may be permitted by regulations prescribed by the Secretary of Agriculture and the Secretary of the Treasury. In such cases, the payment of the tax shall be postponed, but shall be paid at the time when bale tags are secured for such cotton. Bale tags may be secured for any of such cotton at any time after ginning (1) upon the payment to such person as the Commissioner may direct, of the amount of tax which would have been payable at the time of ginning, or (2) upon the surrender of certificates of exemption covering an amount of cotton not less than the amount of such cotton. Until bale tags are secured for such cotton, such cotton shall be subject to a lien in favor of the United States for the amount of the tax payable with respect to the ginning of such cotton. The right to postponement of the payment of the tax under this subsection shall be established in accordance with such regulations as the Secretary of Agriculture and the Secretary of the Treasury may prescribe. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe regulations providing for stamping the containers of such cotton so as to indicate the time of ginning and the amount of tax payable with respect thereto.

(g) The right to exemption under paragraph (2) of subsection (e) shall be evidenced by a certificate of exemption issued as herein provided, which certificate of exemption shall be conclusive proof of the right to such exemption.

* * * * *

REGULATIONS BY THE COMMISSIONER

SEC. 12. The Commissioner, with the approval of the Secretary of the Treasury, shall prescribe (a) regulations with respect to the time and manner of applying for, issuing, affixing, and destroying bale tags, and the method of accounting for receipts from the sale of and for the use of such bale tags, and (b) such other regulations as he shall deem necessary for the enforcement of the taxing provisions of this Act.

INFORMATION RETURNS

SEC. 13. (a) All persons, in whatever capacity acting, including producers, ginners, processors of cotton, and common carriers, having information with respect to cotton produced, may be required to make a return in regard thereto, setting forth the amount of cotton delivered, the name and address of the person who delivered said cotton, the amount of lint cotton produced therefrom, and any other and further information which the Commissioner, with the approval of the Secretary of the Treasury and the Secretary of Agriculture, shall by regulations prescribe as necessary for the proper administration of the tax. Any person required to make such return shall render a true and accurate return to the Commissioner.

(b) Any person willfully failing or refusing to file such a return, or filing a willfully false return, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment not exceeding one year, or both.

SEC. 14. (a) All provisions of law, including penalties, applicable with respect to the taxes imposed by section 800 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with the provisions of this Act, be applicable with respect to taxes imposed by this Act.

(b) Except as may be permitted by regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury, with due regard for the protection of the revenue, no person shall: (1) Transport, except for storing or warehousing, under the provisions of section 4 (f) beyond the boundaries of the county where produced any lint cotton to which a bale tag issued under this Act is not attached; or (2) sell, purchase, or open any bale of lint cotton to which a bale tag issued under this Act is not attached.

(c) No seed cotton harvested during a crop year with respect to which the tax is in effect shall be exported from the United States or any possession thereof to which this Act applies to any possession of the United States to which this Act does not apply or to any foreign country.

(d) Any person who willfully violates any provision of this Act, or who willfully fails to pay, when due, any tax imposed under this Act, or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any bale tag or certificate of exemption made or used under this Act, or who uses, sells, or has in his possession any such forged, altered, or counterfeited bale tag or certificate of exemption, or any plate or die used, or which may be used in the manufacture thereof, or

has in his possession any bale tag which should have been destroyed as required by this Act, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such bale tag or certificate of exemption, or who reuses any bale tag required to be destroyed by this Act, or who places any cotton in any bale which has been filled and stamped, tagged, or otherwise identified under this Act, without destroying the bale tag previously affixed to such bale, or who affixes any bale tag issued under this Act to any bale of lint cotton on which any tax due is unpaid, or who makes any false statement in any application for bale tags or certificates of exemption under this Act, or who has in his possession any such bale tags or certificates of exemption obtained by him otherwise than as provided in this Act, shall on conviction be punished by a fine not exceeding $1,000, or by imprisonment for not exceeding 6 months, or both.

(e) Any person who willfully violates any regulation issued by the Secretary of Agriculture or the Secretary of Agriculture and the Secretary of the Treasury under this Act, for the violation of which a special penalty is not provided, shall, on conviction thereof, be punished by a fine not exceeding $200.

COLLECTION OF TAXES

SEC. 19. The taxes provided for by this Act shall be collected by the Commissioner of Internal Revenue under the direction of the Secretary of the Treasury. Taxes collected shall be paid into the Treasury of the United States.

REFUNDS

SEC. 20. (a) No refund of any tax, penalty, or sum of money paid shall be allowed under this Act unless claim therefor is presented within six months after the date of payment of such tax, penalty, or sum.

(b) No suit or proceeding shall be maintained in any court for the recovery of any tax under this Act alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No suit or proceeding shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision therein within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall, within ninety days after any such disallowance, notify the taxpayer thereof by registered mail.

Revised Statutes:

SEC. 3220. [As amended by Sec. 1111 of the Revenue Act of 1926, c. 27, 44 Stat. 9,

and Sec. 619 of the Revenue Act of 1928, c. 852, 45 Stat. 791.] Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sum of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section. (U.S.C., Title 26, Sec. 1670.)

Second Deficiency Appropriation Act of 1938, Public, No. 723, 75th Congress, 3d Session:

AN ACT Making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1938, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1938, and June 30, 1939, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply deficiencies in certain

appropriations for the fiscal year ending June 30, 1938, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1938, and June 30, 1939, and for other purposes, namely:

* * * * *

Refunds and payments of processing and related taxes: For refunds and payments of processing and related taxes as authorized by titles IV and VII, Revenue Act of 1936, for refunds of taxes erroneously, illegally, or otherwise wrongfully collected, under the Cotton Act of April 21, 1934, as amended (48 Stat. 598), the Tobacco Act of June 28, 1934, as amended (48 Stat. 1275), and the Potato Act of August 24, 1935 (49 Stat. 782); and for redemption of tax stamps purchased under the aforesaid Tobacco and Potato Acts, fiscal year 1939, $50,000,000, together with the unexpended balance of the funds made available to the Treasury Department for these purposes for the fiscal year 1938 by the Second Deficiency Appropriation Act, fiscal year 1937.

For the refunding, which is hereby authorized, in accordance with rules and regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, of all amounts collected by any collector of internal revenue as tax (including penalties and interest) under the Bankhead Cotton Act of 1934 (48 Stat. 598), as amended, the Kerr Tobacco Act (48 Stat. 1275), as amended, and the Potato Act of 1935 (49 Stat. 750), fiscal year 1939, so much of the appropriation in the immediately preceding paragraph as may be requisite is hereby made available for the purposes of and in accordance with the provisions of this paragraph: *Provided*, That no

refund shall be made or allowed of any amount paid by or collected from any person as tax under such Acts, unless, after the date of the enactment of this Act, and prior to July 1, 1939, a claim for refund has been filed by such person: *Provided further,* That no refund shall be denied upon the ground that a proceeding to recover had become barred by the limitation provisions of such Acts, or by the provisions of section 3226, as amended, of the Revised Statutes, or by the provisions of section 608 of the Revenue Act of 1928: *Provided further,* That in the absence of fraud all findings of fact and conclusions of law of the Commissioner of Internal Revenue upon the merits of any such claim for refund, and the mathematical calculations made in connection therewith, shall not be subject to review by any court or by any other officer, employee, or agent of the United States: *Provided further,* That no refund of any tax shall be made under this paragraph unless liability for the payment of such tax was satisfied by the payment of money: *Provided further,* That no interest shall be allowed in connection with any refund made under the authority of this paragraph: *Provided further,* That in the case of amounts paid as tax under the Bankhead Cotton Act of 1934 with respect to the ginning of cotton (a) refund shall be allowed to the ginner of the cotton only to the extent that the ginner has not shifted the burden of the tax by including it in any charge or fee for ginning, or by collecting it from the owner or owners of the cotton ginned, or in any manner whatsoever, and (b) refund shall be allowed to the owner or owners of the cotton at the time of ginning, to the extent that the amount of tax was shifted to

such owner or owners by the cotton ginner and was not shifted by such owner or owners to other persons, and in such cases, but only for the purposes of this paragraph, the tax shall be considered to have been paid by the ginner to the United States for the account of such owner or owners. No part of the amount of any refund made under this paragraph in excess of 10 per centum of the amount of such refund shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such refund, and the same shall be unlawful, any contract to the contrary notwithstanding; and any person violating the provisions of this sentence shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

Treasury Regulations 84 (1935 Edition):

ART. 5. *Measure of the tax.*—The measure of the tax is the number of pounds of lint cotton resulting from the ginning of seed cotton. The actual weight, or an average representative of the actual weight, of bagging and ties may be deducted as tare in computing the number of pounds of lint cotton resulting from the ginning of seed cotton.

ART. 6. *Rate of tax.*—The rate of tax on the ginning of cotton is 50 per cent of the average central market price per pound of lint cotton, but in no event less than 5 cents per pound. Such average central market price will be determined by the Secretary of Agriculture, and thereafter such rate will be announced by the Commissioner. If the rate is changed, the new rate and the effective date thereof will be announced by the Commissioner.

ART. 7. *When tax attaches.*—The tax attaches upon the ginning of the cotton.

ART. 8. *Liability for the tax.*—Liability for the tax attaches to the ginner immediately upon the ginning of cotton, except that where payment of the tax is postponed as provided for in article 13, liability for the tax attaches to the producer. (See article 21.)

ART. 9. *Exemption from the tax on ginning.*—(a) The ginning of cotton harvested during the effective period shall be exempt from the tax to the extent that any cotton so ginned is covered by tax-exemption certificates. Cotton tax-exemption certificates are issued to producers of cotton by the Secretary of Agriculture. At the time of ginning, the ginner shall detach coupons from the producer's cotton tax-exemption certificate in an amount sufficient to cover (to the nearest 5 pounds) the amount of lint cotton ginned and contained in each bale or other package. A cotton tax-exemption certificate presented to a ginner which does not bear the name of the person presenting it, or is not presented by the agent of the person whose name appears thereon, shall not be accepted by the ginner nor shall a ginner accept a detached portion of a cotton tax-exemption certificate except in cases where seed cotton has been sold by the producer and the detached portion presented has on the reverse side thereof or paper attached thereto the following statement signed by the producer:

"To cover _____ pounds of seed cotton sold to: _____ by _____."
(Name of purchaser) (Signature of producer.)

Any cotton tax-exemption certificates acquired by a ginner in any manner other than that prescribed above will not be accepted

by the collector of internal revenue as evidence of exemption from tax.

(b) The ginning of cotton harvested prior to June 1, 1934, is exempt from the tax. To be entitled to such exemption, the ginner shall procure an affidavit from the person who owns the cotton at the time of ginning. The affidavit shall be executed on G. T. Form 106–B, revised, and shall show (1) the name and address of the owner of the cotton, together with the name and address of the producer, if they are different persons, (2) the location of the farm on which the cotton was harvested, (3) the year in which the cotton was harvested, (4) the location of the building where the seed cotton has been stored, (5) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (6) that a bale tag has been attached to each bale.

(c) The ginning of cotton harvested by a publicly owned experimental station or agricultural laboratory is exempt from the tax. To be entitled to such exemption, the ginner shall procure an affidavit signed by a responsible executive officer of such station or laboratory. The affidavit shall be executed on G. T. Form 106–C, revised, and shall show (1) the name and address of such station or laboratory, (2) the location of the land on which the cotton was harvested, (3) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (4) that a bale tag has been attached to each bale.

(d) The ginning of cotton having a staple of 1½ inches in length or longer is exempt from the tax. To be entitled to this exemption, the ginner and the person who owns the cotton at the time of ginning, shall each

execute an affidavit on G. T. Form 106–D, revised, which shall state: (1) The location of the farm on which the cotton was produced, (2) the date the cotton was ginned, (3) that the cotton has a staple 1½ inches in length or longer, (4) the number of bales of lint cotton resulting from the ginning with the quantity, in pounds, of each bale, and (5) that a bale tag has been attached to each bale.

(e) There must be filed with each return on which exemption from tax is claimed under (a), (b), (c), or (d), above, the required affidavit or affidavits, certificate or certificates, as the case may be.

ART. 11. *Returns of ginners.*—Every ginner shall make a return, in duplicate, of all cotton ginned during each calendar month. A separate return, in duplicate, shall be made for each plant where cotton is ginned. The return shall show with respect to each bale or other quantity of cotton ginned during the month the same data required to be kept in the ginner's record as provided in article 10, and shall account for every bale tag, for every certificate of tagging on G. T. Form 104, revised, and for every lien card on G. T. Form 105, revised, issued to the ginner by the collector as provided in articles 20 and 13. The return on G. T. Form 103, revised, which may be obtained from any collector, shall be filled out in accordance with the instructions contained thereon and in accordance with these regulations. Both the original and the duplicate shall be signed and sworn to before an officer authorized to administer oaths, by the ginner, if an individual, or, in other cases, by an executive officer of the concern. The return (including both original and duplicate)

properly filled out, signed, and sworn to shall be filed with the collector for the district within which the place of ginning is situated. The original return shall have securely attached thereto each cotton tax-exemption certificate surrendered by the producer with respect to cotton ginned during the month, and all affidavits required by articles 9 and 13, and together with the duplicate return shall be filed on or before the last day of the month following the month for which the return is made. The ginner shall tender, with his return to the collector, a remittance to cover the amount of tax due on the ginning of all cotton during the month other than that with respect to which exemption certificates are surrendered, or affidavits are filed.

If the last day of the month on which the return is due falls on Sunday or a legal holiday, the return may be filed on the next following business day.

A return must be filed with the collector for each month whether or not tax liability has been incurred for that month.

If a ginner ceases business, his last return must be marked "final return."

ART. 12. *Payment of ginning tax.*—The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return.

ART. 13. *Postponement of time of payment.*—(a) If a producer intends to store lint cotton resulting from a ginning of cotton produced by him, either on his farm or at such other place as provided for in (b), below, the tax shall not be collected upon the ginning of such cotton, but payment may be postponed until the time fixed for the producer to file his return covering such cotton.

(See article 21.) Until such return is filed and the tax is paid or exemption certificates covering the cotton are surrendered, the cotton in such bales shall be subject to a lien in favor of the United States for the amount of tax payable with respect to the ginning of such cotton. This lien shall be prior to all other liens, claims, or demands of any nature whatsoever.

The ginner who gins such cotton shall obtain from the producer an affidavit, executed in triplicate, on G. T. Form 106–A, revised, showing (1) the ginner's name, (2) the name and address of the producer, (3) the place where the cotton was produced, (4) the date on which the cotton was ginned, (5) the place where the lint cotton is to be stored, (6) the number of bales of lint cotton and the weight of lint cotton contained in each bale, and (7) the serial number of the lien card attached to each bale. One copy of this affidavit shall be attached to the return filed for the month within which the ginning was done, one copy shall be retained by the ginner, and the third copy shall be retained by the producer.

The ginner shall attach to each such bale of lint cotton a lien card on G. T. Form 105, revised, bearing a serial number, which shall be filled out in accordance with the instructions contained thereon. This card shall show the time of ginning, the weight of lint cotton contained in the bale, and the amount of tax due. The lien card will contain a statement to the effect (1) that the cotton is subject to a lien in favor of the United States for the amount of tax payable with respect to the ginning of such cotton, and (2) that any person who transports (except

to the place of storage), sells, purchases, or opens this bale of cotton before a bale tag issued under the Act is attached thereto is liable to a fine not exceeding $1,000, or to imprisonment for not exceeding six months, or both. Such lien card shall not be removed from the bale until a bale tag has been procured and attached thereto. Lien cards may be obtained from any collector. For provisions relating to filing of returns by producers and payment of tax, see article 21.

(b) *Conditions under which untagged cotton may be stored elsewhere than on the farm on which produced.*—In any case where the producer of lint cotton harvested and ginned after May 31, 1934, desires to store one or more bales of such cotton elsewhere than on the farm on which it was produced, without at the time of ginning procuring bale tags therefor, and he has at such time no tax-exemption certificate with which to procure bale tags, he may store such cotton subject to the following conditions:

(1) Such cotton may be stored only in an approved warehouse (see article 2 (q)) located either within or without the county and state in which the cotton was produced;

(2) All such cotton of a producer shall be stored in one approved warehouse selected by the producer;

(3) The requirements of (a) above shall be fully complied with by the producer and the ginner who ginned such cotton;

(4) Both the affidavit and the lien card required by paragraph (a) above shall show the name and location of the warehouse in which the cotton is to be stored;

(5) No bale so stored shall be sold or removed from such approved warehouse for any purpose until a bale tag has been attached to such bale; and

(6) All bales so stored shall be segregated in such warehouse from all bales to which tags are attached.

ART. 16. *Transportation, purchase, or sale of lint cotton.*—No person shall transport or cause to be transported after July 1, 1934, any lint cotton to which a bale tag is issued under the Act is not attached except (a) within the boundaries of the county where produced; (b) for the purpose of storage by the producer, in accordance with article 13; (c) a bale imported and held in customs custody or control (see article 22); (d) for export if the bale tags have been removed as provided in article 30; (e) in the form of bona fide samples in small containers; (f) after it has been put in process.

No person shall purchase or sell a bale of lint cotton unless there is attached thereto a bale tag issued under the Act, and unless the seller of the cotton delivers to the purchaser at the time of the sale a certificate of tagging, G. T. Form 104, revised; provided, however, that warehouse receipts for bales of lint cotton harvested and ginned prior to June 1, 1934, and stored in a warehouse on August 1, 1934, may be purchased and sold if the warehouseman has executed the bond required by the regulations of the Secretary of Agriculture (R. 21, B. A. R. Series No. 1) and has in his possession bale tags and certificates of tagging for the cotton represented by the warehouse receipt or receipts. A bale tag shall be attached to, and a certificate of tagging issued for, each such bale of cotton before it is removed from the warehouse.

No person shall open or break a bale of lint cotton that does not have attached thereto a bale tag issued under the Act, and

for which the owner does not have in his possession a certificate of tagging, unless such lint cotton was, on July 1, 1934, held by the owner on the premises where the cotton is to be processed, and the bale is opened on such premises.

For provisions relating to penalties, see article 37.

ART. 21. *Returns of producers.*—Every producer who has had cotton returned to be stored by him in accordance with the provisions contained in article 13 shall, at least 15 days prior to transporting, selling, or opening any bale of such cotton, file a return on G. T. Form 107, revised.

The return (including both original and duplicate), properly filled out, signed, and sworn to, shall be filed with the collector of internal revenue for the district in which the cotton was ginned. The return shall state the place where the cotton is stored, the number of bales of cotton for which bale tags are desired, and the total weight of lint cotton contained in each bale. There shall accompany the return that duplicate copy of the producer's affidavit which was retained by such producer at the time the cotton was ginned. (See article 13.) If the producer desires bale tags for only a portion of the cotton covered by such affidavit, the return shall cover only such portion, and the collector shall make proper notation on the affidavit and return it to the producer. The affidavit shall be forwarded to the collector each time a return is filed with respect to any part of the cotton covered by such affidavit. When a return or returns have been filed for the total quantity of cotton covered by such affidavit, the collector shall retain the affidavit.

At the time of filing the return, the producer may surrender exemption certificates covering any part of the cotton covered by the return, and shall pay the tax on any part of such cotton not covered by such exemption certificates. Bale tags will thereupon be issued to such producer to identify the bales of lint cotton covered in the return. Each tag when received should be attached to the bale of lint cotton for which it is issued. At the time such bale tags are issued to the producer, certificates of tagging, one for each bale tag, shall be issued by the collector to the producer, who shall be notified by the collector that without such certificate and tag the bale of lint cotton can not be sold or broken or opened. (See article 16.)

The collector shall keep an accurate record of bale tags and certificates of tagging issued under this article, together with the serial numbers of such certificates.

Treasury Decision 4850, approved August 8, 1938 (Internal Revenue Bulletin, August 15, 1938, page 15):

Pursuant to the above-quoted provision of law, the following regulations are hereby prescribed:

ARTICLE 1. *General.*—(a) Refund under the above-quoted provision of law will be allowed, to the person entitled thereto, of all amounts collected as tax, penalty, or interest by any internal revenue collector under the provisions of the Bankhead Cotton Act of 1934, as amended, the Kerr Tobacco Act, as amended, and the Potato Act of 1935. Refund will be allowed only to the extent that the tax, penalty, or interest was paid in money. Satisfaction of tax liability by the surrender or use of tax exemption certifi-

cates, tax payment warrants, or tax exemption stamps is not considered payment of tax in money.

(b) No refund will be denied upon the ground that a proceeding to recover had become barred by the limitation provisions of the Bankhead Cotton Act of 1934, as amended, the Kerr Tobacco Act, as amended, or the Potato Act of 1935, or by the provisions of section 3226, as amended, of the Revised Statutes, or by the provisions of section 608 of the Revenue Act of 1928, provided the person entitled to such refund files a claim in accordance with the provision of law quoted above and these regulations and within the period of limitations prescribed.

ART. 2. (a) *Claim Forms Prescribed—Where to File.*—Claims for refund of amounts paid as tax, penalty, or interest under the Bankhead Cotton Act of 1934, as amended, shall be filed on G. T. Form 111. Claims for refund of amounts paid as tax, penalty, or interest under the Kerr Tobacco Act, as amended, shall be filed on T. A. Form 116. Claims for refund of amounts paid as tax, penalty, or interest under the Potato Act of 1935 shall be filed on Form 843. Such claims shall be prepared in accordance with the instructions contained on the forms and in accordance with the provisions of these regulations. Claims shall be filed with the collector of internal revenue for the district in which the tax was paid. Where the tax was paid by means of stamps, the collection district in which the tax was paid shall be the district in which the sale of the tobacco or potatoes took place and in which a report of the sale was filed with the collector of internal revenue.

(b) *Certificate as to Agent's or Attorney's Fees—Where to file.*—The claimant shall

file with the collector of internal revenue for the district in which his claim of refund is filed a certificate as to attorney's or agent's fees on Form No. 971. This certificate shall be made in accordance with the instructions on the reverse side thereof. Form No. 971 reads as follows:

[Form No. 971

Certificate as to Attorney's or Agent's Fees]

_____, 193_

The Second Deficiency Appropriation Act, fiscal year 1938, approved June 25, 1938, provides in part:

"For the refunding * * * in accordance with rules and regulations to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, of * * * amounts collected * * * under the Bankhead Cotton Act of 1934 * * *, the Kerr Tobacco Act * * *, and the Potato Act of 1935 * * *: Provided, * * *. *No part of the amount of any refund made under this paragraph in excess of 10 per centum of the amount of such refund shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such refund, and the same shall be unlawful, any contract to the contrary notwithstanding; and any person violating the provisions of this sentence shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.*"

In filing the claim for refund of $_____, under the paragraph of the Second Deficiency Appropriation Act, fiscal year 1938, partly quoted above, the undersigned hereby

certifies that all the following statements are true, to the best of his/its knowledge, intention, and belief:

(1) The undersigned has read the portion of the statute quoted above.

(2) The undersigned has not directly or indirectly paid or delivered and will not directly or indirectly pay or deliver to any attorney or agent on account of services rendered or to be rendered in connection with such refund more than 10 per cent (one-tenth) of the amount of such refund.

(3) It is understood by the undersigned that the statute makes it unlawful for more than 10 per cent (one-tenth) of the amount of such refund to be paid or delivered to or received by such agent or attorney for such services even if he has a contract with the undersigned providing for a larger fee than 10 per cent, and that any person convicted of violating this provision is subject to a fine not exceeding $1,000.

_____
(Name of Claimant)

[CORPORATE SEAL] _____
(Address of Claimant)
(See reverse side for instructions.)

The instructions on the reverse side of Form No. 971 read as follows:

INSTRUCTIONS

1. This certificate must be read and signed in duplicate by the claimant, and the original delivered to the Collector when the claim for refund is filed, the copy being retained by the claimant.

2. If the claim for refund was filed after June 25, 1938, and prior to the time this certificate was required to be filed or the

form for it was made available to claimants, the Collector will mail this form to such claimant in duplicate, and within thirty days of the date of such mailing the claimant shall sign and deliver the original to the Collector and sign and retain the copy.

3. If the claimant is an individual or a partnership, the individual or one of the partners must personally sign the certificate unless the Collector is satisfied that this is impossible, in which event it may be signed by a duly authorized agent, and the Collector will then send a copy of the signed certificate to the claimant by registered mail.

4. If the claimant is a corporation, the certificate must be signed with the corporate name, followed by the signature and title of at least one of its responsible officers having authority to sign, or by its receiver or trustee in bankruptcy if the corporation's property or business is operated by such receiver or trustee, and the seal of the corporation must be attached.

5. If the claimant is an executor, administrator, guardian, trustee, receiver, or other fiduciary, such fiduciary shall sign the certificate and shall attach satisfactory evidence of his authority to act.

Collectors should note that under the circumstances mentioned in paragraphs 2 and 3 of the instructions, it is necessary to mail copies of the form to claimant.

ART. 3. *Period During Which Claims Must Be Filed.*—No refund shall be made or allowed of any amount paid by or collected from any person as tax under the Bankhead Cotton Act of 1934, as amended, the Kerr Tobacco Act, as amended, or the Potato Act of 1935, unless, subsequent to June 25, 1938, and prior to July 1, 1939, a

claim for refund is filed by the person entitled thereto, or his duly authorized agent or representative. In accordance with the requirements of the above-quoted provision of law, claims filed on or before June 25, 1938, may not receive favorable consideration by the Commissioner. A person who has filed, on or before June 25, 1938, a claim for refund of any such tax, penalty, or interest, must, nevertheless, to secure a refund, file a new claim on the prescribed form subsequent to June 25, 1938, and prior to July 1, 1939.

ART. 4. *Interest.*—No interest shall be allowed with respect to any refund of tax, penalty, or interest made or allowed under the above-quoted provision of law.

ART. 5. *Refund of Tax Paid Under the Bankhead Cotton Act of 1934.*—(a) Refund of amounts paid as tax, penalty, or interest under the Bankhead Cotton Act of 1934, as amended, will be allowed to the ginner of the cotton who paid the tax to the collector of internal revenue, but only to the extent that such ginner has not shifted the burden of the tax by including it in any charge or fee for ginning, by collecting it from the owner or owners of the cotton ginned or in any manner whatsoever.

(b) If the amount of tax, penalty, or interest was shifted by the ginner of the cotton to the owner or owners of the cotton at the time of ginning, then to the extent that such tax, penalty, or interest was shifted to such owner or owners, and was not shifted by them to other persons, refund will be allowed to such owner or owners. In such case the tax will be considered to have been paid by the ginner to the United States for the account of such owner or owners.

ART. 6. *Certification of Tax Payment by Collector.*—The collector of internal revenue will fill in the certificate of tax payment on the claim in cases where such certification is necessary. In the case of each claim filed on T. A. Form 116, the collector will attach to the claim the tax returns filed by the taxpayer on T. A. Form 113 and the memorandums of sale on T. A. Form 112, which are applicable to the tax payments with respect to which the claim is filed. For this purpose T. A. Form 112 may be detached from the returns on T. A. Form 111 of which they were a part. (See Articles 3, 4, and 5 of T. D. 4452, approved July 23, 1934.) The Collector will then forward the claim to the Commissioner for appropriate action.

ART. 7. *Affidavit of Person Authorized to Receive Check.*—The check in payment of the amount of the refund allowed will be drawn only in the name of the claimant. If the claimant, in connection with any such claim for refund, files, or causes to be filed, a power of attorney specifically authorizing another person to receive the check in payment of the refund, the power of attorney should be accompanied by an affidavit of such other person that, for services rendered or to be rendered in connection with the refund, he has not received and will not receive or accept, directly or indirectly, as compensation for such services, more than 10 per cent of the amount of the refund allowed.

This Treasury Decision is prescribed under the authority contained in the above-quoted provision of the Second Deficiency Appropriation Act, fiscal year 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1938

SUPREME COURT OF THE UNITED STATES.

No. 12.—October Term, 1938.

O. F. Stahmann, Anna M. Stahmann and Joyce F. Stahmann, doing business as Stahmann Farms Company, Petitioners, vs. S. P. Vidal, Collector of Internal Revenue for the District of New Mexico.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[November 7, 1938.]

Mr. Justice Roberts delivered the opinion of the Court.

We are to decide whether the petitioners may maintain an action to recover from a collector of internal revenue sums paid by them as taxes assessed under the Bankhead Cotton Act.[1]

During the crop year 1934-1935 the petitioners were engaged in growing cotton and produced a quantity in excess of the allotment for which, under the terms of the Act, they were entitled to obtain tax exemption certificates. Petitioners delivered the excess cotton to Santo Tomas Gin Company, which ginned it and filed returns with the respondent, as collector, showing a tax of some $13,000 due on the ginning. The respondent, as directed by the Act, assessed the tax against the gin company. The latter refused to deliver the cotton to the petitioners until the tax was paid; and to obtain their cotton the petitioners, in November 1934 and January 1935, paid the tax to the respondent. March 6, 1935 they presented a claim for refund, which was rejected by the Commissioner of Internal Revenue August 22, 1935. Suit was brought against the respondent May 5, 1936, to recover the amount paid with interest, the petitioners alleging that the Bankhead Act was unconstitutional. This the answer denied, and set up the further defense that, under the Act, the petitioners were not liable for the tax, any payment they had made was in discharge of a liability imposed by the Act on the gin company, and, consequently, they were not entitled to maintain the action.

[1] Act of April 21, 1934, c. 157, 48 Stat. 598.

The District Court, a jury having been waived, held that the Act was unconstitutional, that the petitioners could maintain the action, and gave judgment for them. The Circuit Court of Appeals refused to pass upon the constitutional question, as it was of opinion that the trial court erred in sustaining the petitioners' standing, and reversed the judgment.[2] On account of the importance of the case we granted certiorari, limited, however, to the question whether the petitioners were the proper parties to maintain the action.

Section 20(b) of the Bankhead Act[3] stated the conditions upon which a proceeding might be maintained for the recovery of any sum alleged to have been erroneously or illegally assessed or collected under its terms. The Act was repealed February 10, 1936,[4] prior to the institution of the instant action. The petitioners were therefore remitted for recovery of the sum demanded to R. S. 3226, as amended by the Act of June 6, 1932, Section 1103.[5] As thereby required, they timely filed a claim for refund, which was denied, and timely brought their action. Under this section it is unnecessary to plead or prove that the tax was paid under protest or its collection was accomplished by duress.

The sole question for decision is whether the petitioners voluntarily paid someone's else tax. If they did they may not maintain the action.[6]

The respondent insists that, by the terms of the Act, the tax is imposed upon the ginner and not upon the producer. The petitioners, on the other hand, point to the provisions of the Act which make the levy of the tax dependent upon the vote of cotton producers and not upon any act of the ginners; which base exemptions from the tax upon the time, manner, and character of production and not upon the time, manner, or character of ginning; which grant exemptions to producers, not to ginners; which condition exemptions upon the producers meeting certain conditions and limitations; and which fix quotas for exemptions to producers. They say

[2] 93 F. (2d) 902.

[3] 48 Stat. 606.

[4] 49 Stat. 1106.

[5] 47 Stat. 169, 286; U. S. C. Tit. 261, §§ 1672-1673.

[6] Compare Wourdack v. Becker, 55 F. (2d) 840; Clift & Goodrich v. United States, 56 F. (2d) 754; Ohio Locomotive Crane Co. v. Denman, 73 F. (2d) 408; Central Aguirre Sugar Co. v. United States, 2 F. Supp. 538; Combined Industries, Inc. v. United States, 15 F. Supp. 349.

Congress never intended the ginner should bear the tax since the Act provides that he is to be reimbursed up to twenty-five cents per bale for additional expense incurred by him in connection with the administration of the Act. They assert that the respondent's contention that the tax is upon the ginning of the cotton is negatived by the fact that it is not assessed upon all cotton ginned regardless of the amount produced by the owner of the particular farm, and that it amounts per bale to approximately five times the amount of the customary charge for ginning. They call especial attention to those sections of the Act which impose a lien for the tax upon the cotton if it is removed from the gin, forbid transportation of the cotton,—the producers' property,—beyond the county where produced except for storage, and prohibit opening of the bale or sale of the cotton until the tax shall have been paid. They say it is obvious the statute made the ginner a convenient collecting agent to enforce payment of the tax and that the purpose was to force the farmer to pay by prohibiting his use of his excess cotton unless and until he paid; and the latter is, therefore, entitled to maintain an action for the refund of the tax if it was illegally collected.

We hold that the petitioners are entitled to maintain the action. The purpose of the Bankhead Act was to restrict the production of cotton and, to that end, to levy a heavy tax in respect of that produced in excess of the farmer's quota. The tax bore no relation to the ginning of cotton. On the contrary, it was intended to fall, and the Act attempted to make it fall, upon the producers. The assessment of the tax against the ginner was intended to immobilize the cotton in his possession until the producer should liquidate the tax. This is evident from the provisions which impose a lien upon the cotton for the amount of the tax upon removal of it from the gin without payment of the tax and while permitting it to be stored by the producer, forbid the opening of a bale or the sale of it until the tax liability shall have been discharged. Plainly the purpose was that if the ginner should release the cotton to the producer while the tax remained unpaid the lien upon it would insure payment by the producer.

The scheme of the Act sets the case apart from any to which our attention has been called arising under other taxing acts. The collector was part of the machinery for compelling the farmer to pay the tax, for immobilizing the cotton and making it unusable

until the assessment he had made against the ginner was satisfied by payment of the tax. Whether or not the tax was imposed upon the petitioners, they are, according to accepted principles entitled to recover unless they were volunteers, which they plainly were not because they paid the tax under duress of goods.

The judgment is reversed and the cause remanded for further proceedings in conformity with this opinion.

Reversed.

Mr. Justice REED took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.